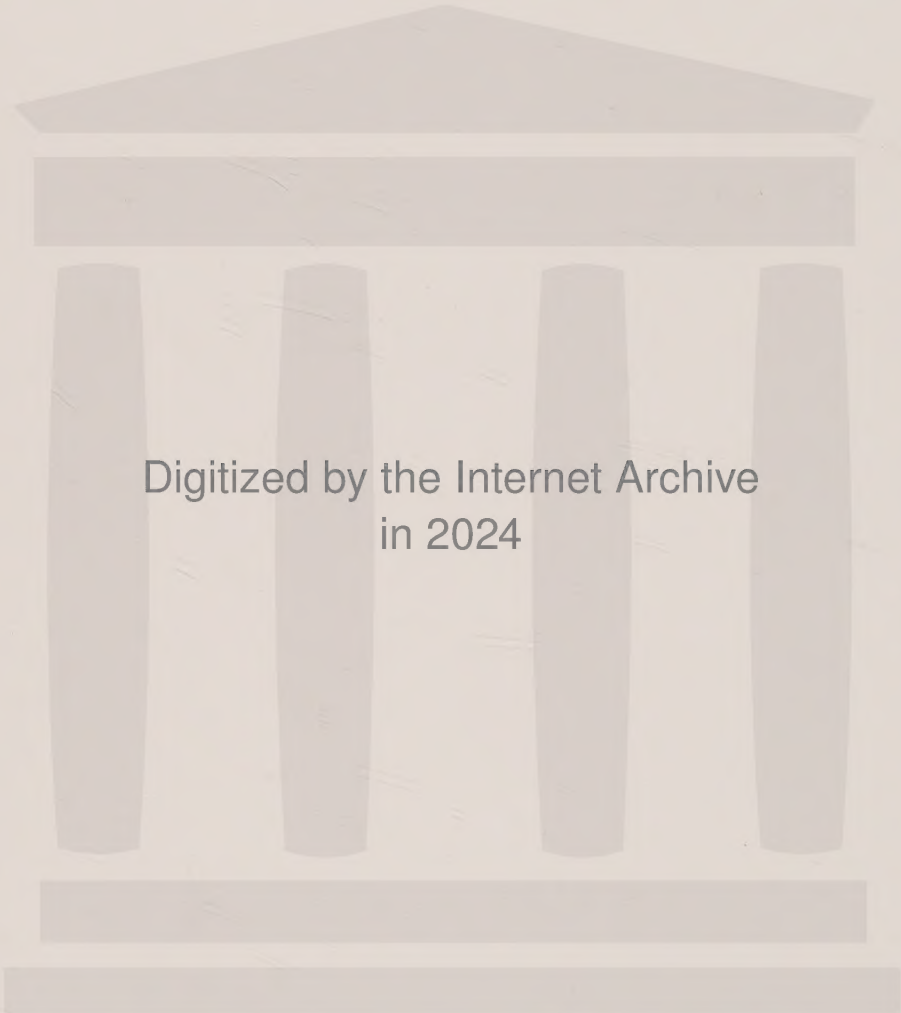
Business, Ethics and Society

Edited By Kathleen A. Getz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BUSINESS, ETHICS AND SOCIETY

EDITED BY
KATHLEEN A. GETZ

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Master Syllabus

18.622: Business and Society
American University
Kogod College of Business Administration

Required Reading Materials

Simon & Schuster readings book
Materials distributed in class

Optional Reading Materials

Carroll, A. B. 1993. Business & Society (2nd Ed.), South-Western Publishing.
Frederick, W.C., J.E. Post & K. Davis. 1992. Business and Society (7th Ed.), McGraw Hill.
Note: Both of these books are on reserve in the library.

Substantive Course Objectives

The objective of this course is to prepare future global business managers to operate in complex environments. Regardless of specific responsibilities, all managers must cope with a variety of issues that involve ethical judgments and relationships with society at large. This course focuses on domestic, cross-national, and international non-market activities that affect management performance. Specific objectives of the course include

1. To sensitize managers to the range of issues that arise in an organization's environment, thereby broadening their perspective on the dimensions of the managerial task.
2. To explore the variety and nature of the relationships between firms and stakeholders.
3. To increase the ability of managers to recognize ethical issues by developing conceptual frameworks for understanding how ethical issues arise and to reduce managers' apprehension about ethical behavior.

4. To develop practical approaches to the management of interactions with individuals, groups and institutions in the organization's environment.

General Course Objectives

A key purpose in any class is to enhance in students general skills that are important in their personal and professional lives. Thus additional course objectives are

1. To develop and improve written and oral communication skills.
2. To develop the ability to analyze information critically.
3. To improve team membership skills.
4. To develop professional ethics and personal integrity.

Class Format and Student Responsibilities

Class sessions consist of lecture, small group interactions, debates, and instructor- and student-led group discussion. Reading assignments must be completed prior to class and students should participate actively in discussions and classroom activities.

Make-up Policy

All assignments must be completed by the scheduled due date. Exceptions will be made only in extreme and documented situations (e.g. family and medical emergencies). You must obtain approval prior to the due date.

Attendance Policy

Punctual attendance is required. Information presented in class may not be described completely in the assigned readings. Also, your own views on the topics important in business and society are best developed through active and guided discussion.

Academic Integrity Policy

In accordance with the University's Academic Regulations, cheating in any form will not be tolerated. This includes plagiarism and receiving or giving inappropriate assistance on assignments. Cheating is an extremely serious offense. You are expected to monitor each other and to sanction classmates for cheating. In addition, allegations of cheating will be referred to the KCBA Dean for appropriate action.

Grading

Case Memorandum 10%
Paper #1 (Ethical Analysis) 30%
Paper #2: (Book Review) 30%
Paper #3 (Memorandum) 30%
THERE WILL BE NO OPPORTUNITIES TO EARN EXTRA CREDIT.

Cut-off points for letter grades are as follows:

A	94.0	[superior]
A–	90.0	[excellent]
B+	87.0	[very good]
B	83.0	[good]
B–	80.0	[satisfactory]
C	73.0	[not satisfactory]
D	66.0	[poor]
F	0.0	[failure]

Cases

Cases are a vital part of business education and we shall discuss a number of them. It is your responsibility to study assigned cases and to be ready to discuss them in class. You may be asked at random to lead case discussion. Note: There will be a written assignment for one case (see below).

Class Participation

Active participation in class is essential to your learning, and good participation is expected. While you will not be graded on participation, I reserve the option of adjusting final grades upward based on consistent outstanding participation. In other words, borderline grades may be rounded up based on the quality of participation.

Case Analysis

Details will be provided with your semester-specific syllabus, distributed the first day of class.

Paper #1: Ethical Analysis

Details will be provided with your semester-specific syllabus, distributed the first day of class.

Paper #2: Critical Book Review

Details will be provided with your semester-specific syllabus, distributed the first day of class.

Paper #3: Memorandum

Details will be provided with your semester-specific syllabus, distributed the first day of class.

Elements of Critical Thinking

Differentiating Between Fact and Opinion

A fact is a statement that can be proven true by other verifiable facts. An opinion is a statement of a person's feelings or impressions. Consider:

- What externally verifiable information is presented that makes this statement true or factual?
- How does the author differentiate between the interpretation of information and the presentation of factual data?

Recognizing and Evaluating Author Bias and Rhetoric

Most authors are biased. Some may attempt to minimize the influence of their biases, while others may use rhetoric to amplify their biases. Consider:

- What qualifications does the author have for writing on this subject?
- What are the qualifications of the individuals the author quotes?
- What do you think the author wants his readers to think or do?

Determining Cause-and-Effect Relationships

Through attentive reading of a book, you may come to understand that one situation of determinable fact may generate a second, fundamentally related situation. In an attempt to clarify the cause-and-effect relationship, consider:

- What happened first?
- Was an earlier situation or event necessary for a later situation to arise or event to occur?

Determining the Accuracy and Completeness of Information Presented

Once fact and opinion have been differentiated, author bias is known, and a rudimentary understanding of cause-and-effect relationships examined, it must be determined if the information presented is complete and accurate. Consider:

- Is more information needed?
- Does the book provide enough information for an unbiased assessment of the situation?
- What sources could be used to check the information presented for accuracy?

Recognizing Logical Fallacies and Faulty Reasoning

Critical thinking requires the ability to recognize faulty logic. Here are seven major examples of fallacies of reasoning that you should be able to recognize. Notice that several of them are variations of the criteria for critical thinking. The fallacies are:

1. Incorrect assumption of cause/effect relationship.

—Every time I wash my car, it rains; therefore, if I wash my car, it will rain.

2. Inaccurate or distorted use in the interpretation of numerical statistical information.
   —Lowering of the speed limit on highways to 55 mph has resulted in fewer traffic fatalities. [Alternative explanations should be considered. Perhaps lowering the speed limit coincided with something else that affected the number of traffic fatalities (e.g., stricter enforcement of prohibitions against drunk driving).]
3. Faulty analogy, comparison carried too far, or comparison of things that have nothing in common.
   —Apples and oranges are both fruits that grow on trees; therefore, apples and oranges taste the same.
4. Oversimplification. Potentially relevant information is ignored in order to make a point.
   —The majority of voters in the U.S. are Democrats; therefore, Democratic candidates will win every election.
5. Stereotyping. People or objects are lumped together under simplistic labels.
   —Hispanic Americans all speak Spanish; therefore, Spanish language advertising will appeal to all of them.
6. Ignoring the question. Digression, obfuscation, or similar techniques are used to avoid answering a question.
   —When asked about a tax increase possibility, a senator replies, "I have always met the obligations I have to those I represent."
7. Faulty generalization. A judgment is based on insufficient evidence.
   —Ducks and geese migrate south for winter; therefore, all waterfowl migrate south for the winter.

Comparing and Contrasting Information and Points of View

You have read or will read many articles and books on related subjects, and authors' points of view may conflict. This should enable you to think more critically about issues. Consider:

- Do authors supply the same sets of facts?
- Do authors interpret facts differently?

Developing Inferential Skills

You should learn to apply a line of argument from one source to another. Consider:

- In article A, the author claims that the reason for the current state of affairs was the result of X, Y, and Z. If that has been proven false, how do those findings affect the related argument in article B?

Making Judgments and Drawing Logical Conclusions

Making judgments and drawing logical conclusions require the implementation of all the above-listed critical thinking skills. Consider:

- What are the conclusions drawn by the author of the book?
- Do you agree or disagree with the author's conclusions?
- What other conclusion is it possible to draw from the same information?
- What other information might it be important to know before making any judgment of the value and importance of the book?

Writing Guidelines

Format

Professional papers in business traditionally follow a specific format. This might be considered a cross between "academic papers" and "technical reports." This type of writing is single-spaced, using 12-point font. The beginning of each paragraph is indented 1/4 to 1/2 inch. There is one blank line (double-space) between paragraphs. One-inch margins are used all around (top, bottom, left, right).

Style

You should be aware of writing style. Sentences should be properly constructed and should present a complete thought. The presentation of numerous thoughts within a single sentence is a "run-on" and is inappropriate.

Similarly, paragraphs should be properly organized and of proper length. Each paragraph contains a single idea, typically developed in three to six sentences. Slang, idiomatic language and profanity are unacceptable in professional business communication.

Referencing

There are many different, generally accepted forms for referencing work. For the assignments in this class, footnotes with complete citations are most appropriate. You may use any style for footnotes, as long as you use the same style throughout the paper, and provide compete information. The assignments in this class should not require extensive referencing.

Spelling

By all means, you should take advantage of the spell-check programs embedded in your word processor. However, a spell-checker is not a substitute for your own proofreading of your work. Check before printing the final paper for submission. Erasing mistakes and writing in corrections with a pen is not professional.

Word Usage

Common errors among former students include the following:

—contractions: They are inappropriate in a professional paper. Use "do not" rather than "don't" or "cannot" rather than "can't".

—whole words: "Cannot," "lawsuit," and "workplace" are whole words, not two words. There are many other similar words. When in doubt, check the dictionary.

—hyphenated words: Hyphens are to be used when two or more words work together to express a specific concept, especially as an adjective. We often use words in business that are hyphenated, such as "long-term," "self-interested," or "socially-oriented."

—abbreviations: While they are inappropriate in an academic paper, they may be acceptable in a business paper. The rule-of-thumb is that abbreviations that require a period ("govt.") are inappropriate while those that do not require a period (mph) are acceptable. This rule is untidy, however, as there are notable exceptions. For example, "Inc." requires a period and is acceptable. When in doubt, spell it out.

—numbers: The proper style is to write out numbers one through ten and use numeric form for numbers 11 and higher. Numbers used at the beginning of a sentence should be written out, for example, "Thirty-six factories. . . ."

—use of "its": Many students are confused by "its" versus "it's." If you are trying to use the word as a contraction (which you know by now is inappropriate), use "it is." If you are using the word as a possessive, then use "its." There is no apostrophe in the possessive "its."

—possessive form: The possessive form is a commonly misused concept. If you are expressing something that belongs to a person or thing, then use an apostrophe. For example, "This is Kim's paper," or "The firm's policy states. . . ."

—slang phrases: These are unacceptable in a business paper. You should avoid falling into a conversational or colloquial style. Maintain a professional tone, typically writing in the third person.

Class Schedule and Reading Assignments

Class	Topics and Assignments
1	Course Introduction Models of Business and Society Stakeholder Analysis
2	Responsibility and Responsiveness Reading: Carroll: Chapters 1, 2, 3 Frederick, et al.: Chapters 1, 2, 5 Case: General Motors and the City of Norwood, Ohio Homework: GM Stakeholder Analysis
3	Ethics and Values Reading: Ethical Principles in Business (Velasquez) Carroll: Chapters 4, 5 Frederick, et al.: Chapters 3, 4 Homework: Survey of Ethical Theoretic Aptitudes
4	Ethics and Values Case: Challenger: The Path to Disaster Homework: Challenger Case Questions
5	**Paper #1 Due** Social Issues Across National Borders Reading: A Roundtable Discussion . . . Commercial Corruption (WSJ) Carroll: Chapter 6 Frederick, et al.: Chapters 6, 7 Case: Conscience or the Competitive Edge

6 Business-Government Relations: Regulation and Regulatory Reform
Reading: Transforming Legislation into Regulation (Getz)
Schools Brief: Of Bees and Lighthouses (Economist)
Clearing the Air: What Really Pollutes? (Solomon)
Guide to Innovative Techniques (Getz)
Carroll: Chapter 7
Frederick, et al.: Chapter 10
Homework: Regulation Diary

7 Business-Government Relations: Politics
Reading: Lobbying (Eagleton)
Suckers! (Rauch)
Leech Control (Letters to the Editor)
Carroll: Chapter 8
Frederick, et al.: Chapter 9
Video: Washington Under the Influence

8 **Case Analysis Due**
Environmental Regulation and Enforcement
Reading: Carroll: Chapters 11, 12
Frederick, et al.: Chapter 19
Guest: Professor Jim Salzman, Washington College of Law
Case: The Clean Air Act and the Wood Products Industry

9 **Paper #2 Due**
Activity: Discuss and debate books
Homework: Bring in worksheets from readings book.

10 Employee Issues
Reading: Loyalty: Subversive Doctrine? (Carbone)
Voices from the Firing Line (Casey)
Carroll: Chapter 14, 15, 16
Frederick, et al.: Chapter 13
Case: The Lincoln Electric Co., 1989
Homework: Supervisor/Subordinate Survey

11 Responding to Intractable Problems: Poverty
Reading: Wealth and Poverty (Buchholz)
The Working Poor (Kossek, Huber-Yoder, Castellino & Lerner)
e.villages Materials at <www.evillages.com>

12	**Paper #3 Due**	
	Community Relations: Conflict & Risk	
	Reading:	Carroll: Chapters 13, 18
		Frederick, et al.: Chapter 15
	Case:	Responsible Care and Worst-Case Scenarios
13	Environmental (In)justice	
	Reading:	A Breath of Justice (Keeva)
		The Mainstream Environmental Movement (Adams)
		Have Minorities Benefited? A Forum (EPA Journal)
		Plant Manager's Introduction to Environmental Justice (CMA)
14	Competitive Strategy	
	Case:	Ethical Dilemmas Regarding Competitive Intelligence
	Homework:	Drawing the Line
	Course Evaluations	
15	Make-up day if any classes must be canceled during the module.	

You are responsible for any changes to the schedule that are announced in class.

1

General Motors and the City of Norwood, Ohio

S. Prakash Sethi and Paul Steidlmeier

Plant closings and their impact on affected communities

> General Motors has "turned the corner" and is beginning to realize the expected economic results of the reorganization of its North American Automotive Operations. Its $10-billion plant construction and modernization program, and other actions are designed to create a trimmer and more competitive company.[1]

These were the opening comments of GM's chairman, Roger B. Smith, in a major press conference on November 6, 1986. This upbeat statement, however, was only the prelude to the grim news that was to follow:

> A fundamental part of our "Strategy of the Eighties" plan has been to replace obsolete facilities with new or modernized plants. Just as with our reorganization moves, we recognized that for a transition period there would be an inevitable overlapping of capacity and personnel. Now we have progressed to the point where the new plants and equipment are coming on stream and the expected efficiencies can begin to pay off.[2]

GM's chairman stated that the resulting modernization reorganization would result in the closing of eleven plants that had become redundant with the construction of six new assembly plants and the total refurbishing of twelve others. GM officials also confirmed that eleven automobile assembly and metal fabrication operations would be closed in the United States and would affect 29,000 employees.

GM estimated that cessation of these operations would result in fixed-cost reductions of $500 million annually. However, these actions would benefit all who had a stake in the continued well-being of General Motors. This statement was a follow-up to an earlier statement by GM, in which the company had indicated that it was in the process of reducing its salaried workforce by 25% by 1989 to reduce costs and increase it competitiveness.[3]

Over the years, GM had been losing its market share. The statement went on outlining the details of the various plants scheduled for closing (Table 1).

To the city of Norwood, the announcement of the GM plant closing came as a thunderbolt from the sky. Its economic impact on the community was nothing short of catastrophic. At one time, the city officials even contemplated declaring bankruptcy. However, this idea was not seriously pursued.

Although the direct impact of the plant closure would be the dislocation of the plant's 4,300 workers who relied on General Motors for their livelihood, the indirect impact would be even greater. The plant closure would result in a direct loss of $2.7 million in earnings and property tax revenues to the city of Norwood. This tax loss represented approximately 25% of Norwood's annual operating budget. In addition, the Norwood City School System would lose $2.3 million in property tax revenues. The city was already in the throes of an economic downturn. Several other Norwood industries had recently announced layoffs and possible closure or relocation. Shortly after General Motors' announcement, the U.S. Playing Card Company announced the layoff of 105 workers, and the Siemens Corporation announced the layoff of 75 workers. These developments had followed an announcement earlier that 114 jobs were being eliminated at the Leblond Makino Company. The city had also suffered a loss of $600,000 in federal revenue sharing funds due to the elimination of the federal revenue sharing program at the end of 1986. It was estimated that the loss of income from GM jobs would remove over $100 million annually from the greater Cincinnati economy. The multiplier effect of this income loss would further impact service and supply industries throughout the region.[4] The feelings of the city were best captured by a commentary on a local radio station:

Listen to the Heartbeat, Mr. Smith

> You became one of the world's largest and richest corporations on the sweat and labor of the people who live in our town. And in the process, the people who made you became dependent on you. They put down their roots, took on 30-year mortgages on 50-foot lots. And whatever else they might have been, or wherever else they might have settled, they didn't because you were here. And, at least for most of them, they gave you everything they had. . . .
>
> There are ways to keep the plants open. The state can help, and the workers are willing to make concessions. True, you might make a little less money, but you can add a human touch. You say, in your commercials, "Listen to the heartbeat . . . listen to the heartbeat of America."
>
> To this commentary, I can only add my hope and prayer that the corporate leadership of General Motors will listen to the heartbeat. Listen to the heartbeat of those who built their company—the heartbeat of the workers, families and communities that they are now leaving behind.[5]

TABLE 1.

GM Assembly and Stamping Plant Closings

Plant/Div.[a]	Location	Model	Employees	Closing Date/Remarks
1. Assembly (BOC)	Clark Street, Detroit	Cadillac Brougham	3,500	End 1987
2. Stamping (BOC)	Conner Stamping, Detroit	Body panels for Cadillac Brougham, Olds '88 Wagon	700	1990
3. Stamping	Fleetwood	Body Panels for Cadillac	3,000	—
4. Assembly (CPC)	Pontiac #2	Supreme, Regal, Monte Carlo	1,270	End 1987
5. Assembly (CPC)	Norwood, Ohio	Firebird, Camaro	4,000	Mid-1988
6. Stamping (CPC)	Hamilton/Fairfield, Ohio	Body Panels for Camaro, Firebird	2,500	1990
7. Stamping (Chicago, BOC)	Willow Spring, Illinois	Lux, reg. midsize car body panels	2,900	Phase out
8. Stamping (BOC)	Flint (Mich.) body assembly	G-car Bodies	3,230	End 1987
9. Assembly (T & B)	St Louis, Missouri	Pick-up, crewcab	2,200	Mid-1987 (Move to Janesville)
10. Assembly (T & B)	Pontiac central	Heavy trucks	2,200	Aug. '88—trucks sold to Volvo Sept. '87—buses sold to Greyhound
11. Assembly (T & B)	Flint line	Pick-up	3,450	August 1987

[a]BOC = Buick–Oldsmobile–Cadillac division CPC = Chevrolet–Pontiac–Canada division T & B = truck and bus division

Source: Statement prepared by United Auto Workers (UAW) research department (Xerox) based on publicly available information (January 24, 1987, Norwood, Ohio, p. 79). Hearing of Committee on Labor and Human Resources, U.S. Senate 100th Congress, reviewing the reasons behind GM's decision to close 11 plants in four states, and to determine ways to keep these plants operating and the employees working.

Issues for Analysis

In a changing competitive environment, businesses must relocate plants and facilities and consolidate and expand in order to adapt to changing market conditions. No one challenges the right of business to have operational autonomies in making investment and marketing decisions. At the same time, it is also clear that any sizeable move on the part of a business entity

has serious economic and sociopsychological impacts on the affected workers, and also on the communities and all those who are directly and indirectly affected by the plant closing. This is particularly true in cases of small communities such as the city of Norwood, where a particular business may represent a disproportionately large proportion of its employment and tax base.

The situation is not always one-sided or dismal. Laid-off employees may find new and often more rewarding jobs, pursue new careers, or move to new areas, which prior job commitments may have prevented them from doing before. Similarly, communities may find new vigor by bringing in new high-growth industries, a diversified economic base, and an increased sense of optimism that comes with the process of change.

The primary responsibility of a company in making investment decisions, including plant closings and relocations, is to protect the interests of the owners, i.e., the stockholders, and to ensure the survival of the organization. The next most important group is, of course, the employees. Responsible companies make all possible efforts to minimize, if not completely eliminate, the adverse impact of plant closing on their employees. Good employee relations are important to the success of a business. Furthermore, over the years, a large body of law, as well as employment contracts and union agreements, have succeeded in defining and protecting employee rights.

The situation with regard to the affected communities, however, is not entirely clear and considerable controversy exists with regard to the rights of communities and the obligation of corporations in the event of plant closures, downsizing, and consolidations.

Some of the important issues for analysis are as follows:

1. What are the legal, social, and moral obligations of a company toward the community where its plant closing will have an adverse economic impact?
2. To what extent would the responsibility of a departing corporation be affected under one or more of the following conditions?
   a. whether or not a company is profitable or is losing money;
   b. the company has been operating in the community for a long time (e.g., over 20 years), or a short time (e.g., less than 10 years);
   c. the company is among the largest, if not the largest employer in the community;
   d. the production is being moved to a poorer and cheaper labor area within the United States;
   e. the production is being moved to a Third-World country with cheap labor, or more efficient and economical operating conditions;
   f. the company has recently assumed a large amount of debt as a result of a takeover, leverage buy-out or in an attempt to thwart hostile or potentially hostile takeover;
   g. the company's management made some poor strategic choices, or did not anticipate market changes correctly, and must now undertake radical action to rectify the situation.

3. The adequacy of a company's dealings with the community in the event of a plant closing must be analyzed both in terms of process and outcome. How might one evaluate the negotiating process used by GM in its dealings with the city of Norwood officials?
4. Similarly, how might one evaluate the negotiating stance and process used by the city officials? Could the situation, or the final outcome, have been different if either one or both of the parties had used different negotiating strategies and tactics?
5. How adequate was GM's offer of help to the city given the overall economic environment and its need to deal with a large number of similar situations?
6. How reasonable were the demands the city of Norwood made on GM?
7. What are some of the mechanisms that might prove useful in protecting the legitimate interests of the affected communities and in smoothing out the transition process in the event of plant closings that would not unnecessarily harm the process of "creative destruction" that is an indispensable part and inevitable consequence of technological change, human growth, and economic rejuvenation?

The City of Norwood

The city of Norwood is a small town of 2.3 square miles, with a population of approximately 25,000. It is surrounded on all sides by the city of Cincinnati. Norwood is 100 years old and is very proud of its history and traditions. Compared to Cincinnati, it provides a superior level of municipal services including an excellent public school system. The city's population is 95 percent white. It is almost completely built and no large vacant tracts of land are available for new industrial development, plant expansion, or multiple-unit, high-density housing.

Norwood is highly industrialized and has a number of plants, of which GM has been by far the biggest. Most of the workers employed in the city's plants, however, do not live there and instead commute from Cincinnati and other neighboring communities. For example, of the 4,300 GM workers employed in the plant, less than 500 lived within the Norwood city limits. Unlike most other cities in the United States, property taxes are not the primary source of revenue for Norwood. Instead, the city levies an "earnings" tax that is imposed on all wages earned within the city limits. This allows Norwood to provide an unusually high level of services to its residents without burdening them with heavier property taxes.

Even before the current economic slowdown, suggestions had been made that Norwood was too small to sustain itself as an independent town and that it should merge with its larger neighbor, Cincinnati, which after all surrounds it from all directions. However, the City officials vehemently rejected such a notion and expressed their determination and that of the citizens of Norwood to remain an independent municipal entity.

Chronology of Events

Soon after the GM announcement, officials of the State of Ohio and the City of Norwood initiated discussions with company executives to explore the possibility of keeping the plant open. On January 15, 1987, the governor of Ohio met with GM's chairman, Roger B. Smith. This was immediately followed by a congressional hearing held by Senator Howard W. Metzenbaum (D-Ohio) on January 26, 1987, at Norwood Junior High School. The hearings included witnesses and testimony from, among others, GM representatives, city officials, UAW representatives, and some affected employees.[6]

GM's Reason for These Plant Closing

In testifying before Senator Metzenbaum's Committee, GM's president and chief operating officer, James P. McDonald, outlined his company's position for plant closing and restructuring. He argued that his company had no choice but to close obsolete plants and consolidate production in order to meet the competitive challenges faced by the U.S. auto industry in general and his company in particular.

The American automobile industry, more than any other industry, faced the heaviest burden of restructuring and down-sizing as a result of changing economic conditions, manufacturing technologies, and fierce competition from Japan and other countries. GM, being the biggest of the "big three" U.S. automobile manufacturers, faced the worst situation. In less than ten years, its U.S. market share had gone down to 45 percent from over 60 percent, leaving it with a large proportion of redundant capacity, some of which was quite old and economically and technologically inefficient. To meet the new economic and competitive reality, GM launched a $10 billion-plus plant construction and modernization program, which eventually wound up being a $40 billion program, and took other actions designed to create a trimmer and more competitive company.[7]

An integral part of this strategy had been to replace obsolete facilities with new or modernized plants. The strategic plan called for the closing of eleven plants that had become redundant, with the construction of six new assembly plants and the total refurbishing of twelve others. The operations scheduled for closing would affect 29,000 employees. The assembly plant at Norwood, Ohio, was among those scheduled for closing. It would affect directly approximately 4,300 workers.

Although GM has apparently turned the corner in its drive to regain profitability and competitive health, it is by no means out of the woods. Financial analysts and industry observers insist that GM would need further trimming in order to bring its domestic manufacturing capacity in line with its sales prospects. It is estimated that GM will have to adjust downward from a current market share of 43 percent to an eventual sustainable market share of 35 percent. To achieve this, GM will probably have to close six additional plants during the next five years affecting over 100,000 workers.[8]

GM's management accepted that plant closings caused stress and disruption in the fabric of communities, but felt that unless these very painful decisions were made, the long-term health of the entire domestic manufacturing base would be at stake.

GM outlined the following reasons for its plant closing:

1. Each of the 11 plants included in the current plan had a different reason for closing. Some plants making rear-wheel-drive cars were to be displaced by more modern plants making front-wheel-drive cars. Plants in the truck and bus division were sold to Volvo and Greyhound. Some critics, on the other hand, asserted that GM was closing many plants in order to relocate substantial production capacity overseas—especially for auto parts—and that GM was sourcing more and more automobiles from Korea and Japan.

This point was, however, vigorously denied by GM's president, James F. McDonald. According to his testimony, none of the Norwood city plant's production was to be replaced by overseas production. He also stated that no other American manufacturer could match GM's "commitment to the manufacturing base of this country and to maintain American jobs." (Hearings, p. 6)

2. The Norwood plant was an old three-story plant that could not utilize the latest developments in efficient production systems. Furthermore, as the plant was landlocked, it could not be reconstructed into a modern single-story production facility. According to GM's president, James McDonald, Norwood was one of the oldest and least efficient of GM's plants. Therefore, there was no question that in the long run the Norwood plant had to be closed: "It was a matter of when." (Hearings, p. 7)

3. The Norwood plant produced mid-sized and sporty cars: Chevrolet Camaro and Pontiac Firebird models. These were also being simultaneously produced at GM's Van Nuys, California, assembly plant. The Van Nuys plant was built in 1947, about 25 years after Norwood, and was updated at a cost of $22 million in 1985.

4. GM argued that it had to maintain a presence in the highly competitive California market. The company felt that by closing the Norwood plant, and moving the work to the Van Nuys plant, the latter could be consolidated and made more competitive. GM stressed that they were not sacrificing local production in favor of foreign operations. (Hearings, pp. 6–25)

United Auto Workers' (UAW) Viewpoint

Owen Bieber, president of the United Auto Workers of America, felt that GM, while addressing the erosion of its market share, "flirted with one quick fix after another." He agreed that in a dynamic economy, some plants are likely to close—but was convinced that far too many plants were closing needlessly. In his opinion, when a plant closing was justified, its cost must be shared equitably.

From the UAW's point of view, GM invested heavily for a time to gain its marketshare from domestic and foreign competitors. GM pursued a risky as well as costly strategy—adding capacity at a time when Ford and Chrysler were retrenching, the industry was going through a recession, and imports were increasing. GM ran into numerous problems with the expensive technology-intensive strategy. According to the UAW chief, the idle auto capacity in 1986/87 amounted to about 2 million units. General Motors' announcement of its plant closing was likely to reduce about a million units of work capacity. With the addition of imports and transplants, the excess capacity by the end of the 1988 model year could be up to 40 million units. This was equivalent to 15 assembly plants, each corresponding to two shifts of 6,000 people per plant. Furthermore, for each job in a domestic American auto assembly plant, 11 additional supplier jobs were created (whereas the transplants generated only 3 jobs). Even leaving aside the non-auto jobs, the numbers added up to between 300,000 and 400,000 auto workers' jobs.

Bieber accused GM of diversifying into unrelated industries and buying off its critics when it should be devoting these resources to gaining competitive strength in the automobile industry. In 1984, GM's Hughes Aircraft acquisition cost $5 billion and its Electronic Data Systems acquisition cost another $2 to $4 billion. In December 1986, an additional $750 million was incurred to buy out Ross Perot, EDS's owner.

The UAW chief also charged GM with exporting U.S. jobs. According to Bieber, GM was likely to service 400,000 vehicles offshore by 1988, equivalent to two plants, and produce 100,000 to 200,000 vehicles in a GM-Suzuki plant in Canada, to be shipped to the U.S. under the U.S.-Canada Auto Pact. In 1987, 1 million engines were imported, compared to only 800,000 in 1981. This was equivalent to building a whole new engine plant.

There were some rumors, although denied by everyone at GM, that GM considered the Norwood plant to be afflicted with labor troubles and, therefore, was not anxious to put more money into it. Mayor Sanker admitted that in the past the plant had had more than its share of labor problems, but that these had since been resolved and that labor relations in the plant were excellent. The union felt that workers were not getting "a chance to gain back what had been lost through foreign imports." The union was keen to cooperate with the management, as "for instance, during 1984 the Local Agreement was settled on September 10, four days sooner than the National Settlement on September 14." (Hearings, p. 102)

The local UAW challenged GM's rationale for the Norwood plant closing. Cleon Montgomery, a representative of UAW local 674, contended that "they could build the 1987 model of Camaro and Firebird for $112 million a year cheaper than their sister plant in Van Nuys, and could build the 1988 model $200 million cheaper." Thus, he could not understand General Motors' logic in moving its work to California where "only one out of five automobiles purchased is a General Motors product." He felt that without their "General Motors jobs," they would not buy "General Motors products." Quoting from an article written by the former plant manager

Charlie Miller, Montgomery stressed that whereas the media was given the impression that Norwood was an old and outdated plant, it had in fact undergone extensive upgrading, with new equipment and facilities for quality control, checking, and production, and with one of the most modern paint facilities in the world. He also mentioned that since 1972, there had been very few labor disputes in Norwood. The union's goal was zero grievances. Regarding the Norwood plant being landlocked, Mr. Montgomery felt that with the help of the city of Norwood, more acreage could be acquired at very little cost to General Motors. With the close proximity of suppliers (70% within 300 miles), and the just-in-time inventory, they could expand and save GM money with the proper layout of docks, the company could easily expand and make money and the workers were willing and determined to help GM do it.

City of Norwood's Viewpoint

The city of Norwood argued that GM had given short shrift to its efforts in seeking ways to keep the plant operating. According to Mayor Joseph Sanker:

> We have always worked to meet GM's needs, this included redirecting streets, building a new underpass, making zoning changes that GM wanted.
>
> Furthermore, in recent months, the employees of the Norwood assembly plant have proposed a number of changes intended to reduce costs and improve efficiency at the plant. The city of Norwood, State of Ohio, local utilities and suppliers have joined in that effort.
>
> The attitude here used to be "what GM wants, GM gets." Not any more.[9]

Mayor Sanker also pointed out that while General Motors had decided to close the Norwood plant, several foreign manufacturers were building or planning to build auto plants along the Interstate 75 (I-75) corridor that provided access and proximity to suppliers, customers, and skilled labor. However, he still held out hope that GM could be persuaded to stay:

> In recent months, the employees of the Norwood assembly plant have proposed a number of changes intended to reduce costs and improve efficiency at the plant. The City of Norwood, State of Ohio, local utilities and suppliers have joined in that effort. It is our sincere hope that these proposals will be given full consideration by the management of General Motors. It is our further hope that these proposals combined with the Norwood plant's central location and experienced workforce will lead General Motors to the conclusion that closing the Norwood plant is not a prudent business decision. (Hearings, p. 93)

GM's Actions in the Norwood Plant Closing

On November 6, 1986, GM announced that the Norwood plant would be closed by mid-1988, giving the city almost 18 months advance notice. However, by early March GM announced the first date for its plant closing,

which turned out to be August 26, 1987. As part of its closing effort, GM developed a comprehensive scheme of worker retraining, job placement, and transfer of workers to other GM locations. Moreover, under the GM-UAW contract, the company was to provide supplemental unemployment benefits, guaranteed income stream benefits, relocation allowances, and continuation of health care coverage. Depending on seniority, hourly laid-off employees with one year or more seniority could receive up to 95 percent of their take home pay for up to two years. The combined value of these benefits was estimated to be over $100 million.

At the behest of Ohio's Governor, GM agreed to hire independent economic development consultants, the Battelle Memorial Institute, to evaluate the best future use of the plant's facilities and surrounding land. GM also retained West Shell Realtors to market the Norwood Property.

General Motors also refrained from seeking property tax reassessment on its plant site, thereby saving the City of Norwood about $2 million in tax revenues. GM also demonstrated its earlier commitment to being a good corporate citizen of Norwood City by indicating that its local plant and employees had contributed almost $500,000 to local charities in 1986 alone.

The Battelle Institute Report

In August 1984 Battelle Memorial Institute completed its study and submitted a final report. The Battelle study was designed to accomplish three tasks; (1) objective assessment of strengths and weaknesses associated with the Norwood area; (2) identification of suitable industries and services for GM sites; and (3) development of economic strategies to attract new companies.

The report identified Norwood's strengths in relation to factors such as multi-state market access, transportation, and infrastructure (utilities, communications, health care, etc.) from excellent to good. It also recognized, however, Norwood's weaknesses in the form of a poor system of water transportation, the perception of the city as a location with high operating costs, etc. Based on its analysis of all relevant factors, the report identified over 100 industries and services that might be prospects for the plant site and made specific recommendations for its stepwise redevelopment. The Battelle study concluded that the best use for the site could be served by attracting light manufacturing industries; business-supporting and administrative services; and wholesaling and distribution.[10]

Negotiations Between GM and the City of Norwood

Between November 1986 and March 1987, the city and state officials and UAW leaders made numerous representations to GM for keeping the plant open, but these were unsuccessful. The city immediately launched an effort to cut costs and contain the city's expenses while raising temporary revenues. According to Mayor Joseph Sanker;

> What really hurt us, I guess, is the General Motors announcement that they were going to leave in mid-1988. We took that to heart and immedi-

> ately made cuts. We took some 1.5 million dollars out by payroll deductions. We laid off a total of 37 people. We privatized our waste collection, which saved several hundred thousands of dollars. We did various other things like letting people go through attrition, giving our appointed people 10% cuts in salary. We couldn't lay off our police and fire department personnel because they were under contract. We have economized while maintaining the quality of the fire and police departments. The 70-man fire department was reduced to 52, and the 56-man police department was reduced to 48. These were perhaps top heavy. They made the concessions and agreed to reduce the number of people. The city also tried to enact a 10 mill tax levy, but it was defeated by the local voters.

City officials viewed GM's claims of good corporate citizenship as mere puffery designed for public relations effect. They pointed out that the so-called $100 million GM would pay consisted of contractual payments that GM was obligated to pay and were in no way a magnanimous gesture designed to help the city.

In its dealings with GM, city officials at first attempted a conciliatory approach. They sought GM's help in tiding the city over its financial difficulties during this transition period. They felt that the "big" corporation should be willing to help the "little" town that had come to depend so much on GM. Accordingly, on April 7, 1987, city officials sent a letter to GM's chairman with a "wish-list." It asked that GM provide $2.3 million per year for four years in lieu of taxes, during which period the city would redevelop its tax base. GM was also requested immediately to "donate" to the city GM's 14-acre lot, two parking garages, and to demolish the plant and clear the plant site for redevelopment. In May and June, the city also asked GM to withhold payroll city taxes from the laid-off GM employees' supplemental pay (SUB-pay). The city tax commission also subpoenaed key GM plant officials to appear before the commission and provide information on SUB payments and withholding of taxes, which the tax commissioner estimated to be $2.8 million.

In its response, GM rejected the city's request for aid in lieu of taxes. GM feared it would be confronted with similar requests from all other locations with plant closings, which it simply would not be able to meet. Nor would GM withhold payroll taxes on SUB-pay, as its legality was in question. GM was unwilling to undertake an immediate disposition of its property pending the report from the Battelle Institute. Moreover, in keeping with its policies, GM wanted to undertake a complete environmental clean-up of the property at an approximate cost of $9 million prior to its disposition. Such an action was also necessary to protect GM from any potential liability lawsuits.

Between March and July 1987, discussions and meetings continued between GM representatives and city officials to resolve various outstanding issues arising out of the plant closing. On July 31, 1987, GM released the Battelle Institute report. City officials, however, were not satisfied with either the pace or the progress of negotiations. They had sought the help of

state and national political leaders to pressure GM. However, they were completely unsuccessful in their efforts. Mayor Sanker attributed the failure of these efforts to the politicians' unwillingness to confront GM because the company had many other plants in various congressional districts in Ohio. He further implied that Norwood was a Democratic city in a largely Republican state and, therefore, did not receive much help from Ohio's state and national political leaders.

Undeterred, the city made another strategic change in its efforts to make GM accede to its demands. While discussions with GM were continuing, on August 7, 1987, the city of Norwood filed a suit against GM for $318 million. The city charged GM with breach of contract and fiduciary duty by closing its plant.[11] The city's complaint alleged, among other things, that:

1. GM, during its 64 years of operation, had been storing, burying or dumping ultrahazardous or toxic materials on its Norwood property, and intended to abandon these at the time of closing of its plant.
2. The city had granted GM many concessions on the express and implicit promise that it would retain active manufacturing facilities in the city of Norwood. As a result of the plant closing, the city claimed:

$56,000,000	for the use of tax revenue and commerce
$ 9,000,000	for increased cost of fire and police protection needed
$ 750,000	for construction of the Forest Avenue underpass
$ 2,500,000	for the cost of rededicating previously vacated city streets
$68,250,000	

3. GM had created an equitable fiduciary relationship with the city of Norwood because of its largest relative size and longest (64 years) tenure in the city. Closing of the plant meant a breach of this equitable fiduciary relationship and caused damages to the city. The city asserted that GM had committed fraud by announcing a latter date of closure and then advancing the date.

GM then proceeded with the task of finding a suitable developer for the plant site who could come up with a proposal acceptable to the city, the state, and community leaders. At this point, there was some disagreement within the city administration as to the potential uses for this site. The proposed uses ranged from retail-wholesale distribution activities to a high-rise hotel-office complex. On December 12, 1987, GM announced the selection of the Miller-Valentine Group, a major developer of office and industrial buildings, to develop the Norwood property. The city officials were quite pleased with this selection. Miller-Valentine was given five months to come up with a development plan.

The Miller-Valentine Plan

The M-V group presented its plan in May 1988. It was developed in close cooperation with the Mayor's task force and General Motors. This project was named Highlands Point, after Norwood's title of "Gem of the

Highlands," and was developed to meet the need for "revitalized, upscale economic development in a highly attractive urban setting." The plan called for a judicious redevelopment of existing properties and construction of several new structures for use by retail, sales/service, industrial purposes, and offices. It projected construction of approximately one million square feet of facilities suitable for industrial activity on the 40-acre main plant site, and 90,000 square feet of office development. A 163,000-square-foot retail development was planned for the Globe site—a 15-acre parcel adjoining site. The success of the plan was contingent on the city's cooperation in zoning and street closing, securing of Federal Urban Development grant of $6.2 million, the transfer of property and other financial considerations by GM.

GM officials, however, were becoming increasingly reluctant to continue working with the city while the lawsuit was still hanging over their heads. Thus, the company advised the city that GM would not make the additional financial commitment required by the V-M Group until the city dropped its lawsuit. In a letter to Mayor Sanker, Edmond J. Dilworth, Jr., an attorney and group director of CPC-Public Affairs, stated that while GM had refrained from making any public statements at the city's request, one city official publicly accused GM of "economic terrorism."

> This hysterical and inaccurate characterization unfortunately demonstrates the difficulties we've had in establishing a cooperative relationship with the city. . . . We plan to pursue alternative users for the site, which may involve the sale or lease of the buildings. To do otherwise is a waste of our resources at a time when the corporation is cutting costs to improve our competitive position.

The city officials were stunned by GM's response. They had hoped that the lawsuit would bring added pressure on GM and force the company to provide greater financial support to the city. In that they were disappointed. Observed Mayor Sanker:

> We had been working very closely with Miller-Valentine. They had great plans and were a responsible development company from Dayton, Ohio. The plan was almost ready to be wrapped up and we had a meeting scheduled. They were coming in to give us the final look at the plans. And we met. They showed us the plans, and then the bomb dropped! They said that GM had told them that if we didn't drop our lawsuit GM would not go along with Miller-Valentine.

The city officials refused to withdraw the suit and GM refused to move further. An impasse had been reached, causing Miller-Valentine to withdraw from the project.

The city suffered another major setback when on September 2, 1988, the Hamilton County Court, Ohio, dismissed the city's suit against GM as totally without merit or basis in fact.[12] In concluding remarks, the court stated:

Regrettably, there is no question that the City (and especially its people and the former employees of General Motors in Norwood) has and will continue to suffer from the withdrawal of the Company. A 64-year association that has generally been beneficial to both parties has drawn to a close, but in the broad sense government, all government, exists for the good of the people, not the reverse. The corporate entity of General Motors is one of those "people" for which government exists.[13]

Appendix

TABLE 1. Unit Sales of U.S.-Manufactured Cars (in thousands)

Year	GM	Ford	Chrysler	American Motors	Volkswagen	American Honda	Nissan	Toyota	Total
1979	4,887	1,475	909	148	167	–	–	–	8,213
1980	4,117	2,102	660	117	177	–	–	–	6,546
1981	3,797	1,381	730	94	163	–	–	–	6,163
1982	3,516	1,346	692	77	91	–	–	–	5,722
1983	4,054	1,571	842	193	85	50	–	–	6,795
1984	4,588	1,979	987	190	74	134	–	–	7,952
1985	4,608	2,070	1,140	124	78	146	40	–	8,205
1986	4,533	2,067	1,175	73	74	235	53	7	8,215
1987									
1988									

Source: "Auto Sales Data," *Wall Street Journal*, Jan. 8, 1981, p. 17; Jan 6, 1983, p. 10; Jan. 7, 1985, p. 30; Jan. 8, 1987, p. 13.

Notes

1. General Motors Corporation, "Press Release," Detroit, Michigan, November 6, 1986, p. 1.
2. *Ibid.*
3. *Ibid.*
4. Joseph E. Sanker, Mayor, City of Norwood, "Press Release," January 26, 1987.
5. *Ibid.*
6. U.S. Congress-Senate, General Motors Plant Closing, Hearings before the Subcommittee On Labor, Committee on Labor and Human Resources, One Hundredth Congress, 1st Session, January 26, 1987.
7. General Motors Corporation, press release, p. 1.
8. S. Prakash Sethi, "Norwood, Ohio, Battles GM Over Plant Closing," *Business and Society Review* (1989).
9. Interview with the author. Unless otherwise specifled, all direct quotes or paraphrased statements are based on personal interviews or written communications to the author.
10. Battelle Institute, Final Report on Preparation of a Facility Reuse Assessment and Economic Adjustment Strategy for the Norwood, Ohio Area. Columbus, Ohio: Battelle Institute, August 1987.
11. *City of Norwood, Ohio* v. *General Motors Corporation*, Court of Common Pleas, Hamilton County Ohio, *Complaint and Jury Demand*, Case No. A-8705920, dated August 7, 1987.
12. *City of Norwood, Ohio* v. *General Motors Corporation*, Court of Common Pleas, Hamilton County Ohio, *Complaint and Jury Demand*, Case No. A-8705920, dated September 2, 1988.
13. *Ibid.*

TABLE 2. U.S. Sales of Selected Foreign-Made Cars (in thousands) (1979–1986)

Year	GM	Ford	Chrysler (COLT)	Toyota	Nissan/ Datsun	Honda	Mazda	Subaru	Mitsubishi	Isuzu	Volkswagen	Volvo	Mercedes Benz	BMW	Audi	Porsche	Fiat	Renault	Jaguar	Saab	Hyundai
1979	—	—	—	508	472	353	157	128	—	—	99	57	50	38	43	—	37	19	—	—	—
1980	—	—	—	582	517	375	161	143	—	—	125	57	48	35	43	—	59	25	—	—	—
1981	—	—	111	577	465	371	166	152	—	—	82	64	58	42	—	62	32	39	5	15	—
1982	—	—	102	530	470	366	163	150	—	—	67	72	63	52	—	68	14	38	10	18	—
1983	—	—	104	556	522	351	173	157	33	—	77	88	71	57	48	—	—	33	16	26	—
1984	13	—	92	558	485	375	170	158	39	—	104	98	76	69	71	—	—	12	18	33	—
1985	85	9	105	620	535	406	211	174	50	27	141	102	85	85	74	25	—	7	21	38	—
1986	160	14	136	634	494	458	223	179	50	39	143	111	97	96	60	30	—	4	25	48	169
1987																					
1988																					

SOURCE: "Auto Sales Data," *Wall Street Journal*, Jan. 8, 1981, p. 17; Jan. 6, 1983, p. 10; Jan. 7, 1985, p. 30; Jan. 8, 1987, p. 13.

2

General Motors Stakeholder Analysis

Instructions: Identify four (4) key stakeholders and analyze their position in this case.

Stakeholder #1: _____

Interests: _____

Power (types & sources): _____

Priorities: _____

Potential coalition partners: _____

Stakeholder #2: _____

Interests: _____

Power (types & sources): _____

Priorities: _____

Potential coalition partners: _____

Stakeholder #3: _____

Interests: _____

_____

_____

Power (types & sources): _____

_____

_____

Priorities: _____

_____

_____

Potential coalition partners: _____

_____

_____

Stakeholder #4: _____

Interests: _____

_____

_____

Power (types & sources): _____

_____

_____

Priorities: _____

_____

_____

Potential coalition partners: _____

_____

_____

3

Ethical Principles in Business

Manuel G. Velasquez

Introduction

Several years ago members of Congress proposed that the federal government should be granted sole power to confer corporate status on businesses. Such "federal chartering" of businesses, they claimed, would strengthen the government's ability to regulate corporate activities and to eliminate corporate abuses. During a congressional hearing called to examine this proposal, the following exchange took place between Senator Durkin, who favored the proposal, and a witness who was testifying against the proposal:[1]

> ***Senator Durkin:***
>
> Good morning, ladies and gentlemen. We are beginning an inquiry that, in my opinion, is crucial to the well-being of our people and the country. How do we control and hold accountable huge institutions? To what extent do we profit from these organizations, and to what extent is each of us limited or harmed by their actions? DuPont allegedly [suppressed] price competition among retailers of its Lucite brand paint. I wonder how much more it cost somebody to paint his house because of DuPont's alleged price-fixing! We have, over the last few years, begun to appreciate the real costs of some industrial activities of the past [that] affect our health and environment. The federal response to these problems has been to look at one problem at a time. [But] why not consolidate the hundreds of federal laws and regulations into concise constitutional principles in a single document [on federal chartering]?
>
> ***Witness:***
>
> Mr. Chairman, I am here today to present for your consideration my views on why the proposal for federal chartering of corporations should be rejected. A corporation is created by a voluntary contractual agreement between individuals seeking to promote their own financial self-interest. Corporations are created and sustained by freedom of association and contract, and the source of these freedoms is individual

> rights. As long as you are not wronging anybody else, you have the right to combine with others for any purpose, and the state has no right to monitor, or restrict, or [define] the form of [a] contractual arrangement. I have rights as an individual, and I delegate them to the Congress to make laws in accordance with standards of justice and for the protection of individual rights.

The conclusions of Senator Durkin and the witness were essentially moral judgments. They were not debating whether the law allows federal chartering nor were they debating whether federal chartering is constitutional. Instead, they were judging whether it would be right to *create* a federal chartering law. Their judgments appealed to three basic kinds of moral standards by which we evaluate the moral adequacy of our laws, institutions, and activities: utilitarianism, rights, and justice.

Senator Durkin, for example, argued in favor of federal chartering of businesses by claiming that it would diminish the social costs associated with certain corporate abuses. His argument was an implicit appeal to what is called a "utilitarian" standard of morality; a moral principle, that is, that claims that something is right to the extent that it diminishes social costs and increases social benefits. The witness, on the other hand, argued against federal chartering by claiming that it would violate the "rights of individuals" and be contrary to "standards of justice." These arguments were also appeals to moral standards. Individual rights are based on moral principles that indicate the areas in which the freedom of individuals must be respected, while justice is based on moral principles that identify equitable ways of distributing benefits and burdens among the members of a society.

These three kinds of moral principles constitute three of the most important types of ethical standards studied by moral philosophers. Each kind of principle employs distinctive moral concepts, and each one emphasizes aspects of moral behavior that are neglected or at least not emphasized by the others. The purpose of this chapter is to explain each of these three approaches to moral judgments by describing the kinds of concepts and information that each standard employs.

3.1 Utilitarianism: Social Costs and Benefits

In 1983 the Council on Environmental Quality urged the use of cost-benefit analysis when selecting air pollution standards for "particulates" (airborne particles):

> The Clean Air Act requires that . . . air quality standards be set at a level of air quality that protects public health with an adequate margin of safety. [Different] standards for particulates may be specified by particle size (e.g., all particles or only small particles), by [maximum] allowable concentrations [of particles], and by averaging times (e.g., annual daily averages or specific 24-hour averages). Various . . . standards may achieve the same level of health protection but at differing costs. The Environmental Protection Agency recently analyzed the benefits and costs of

> various standards for controlling particulate matter [by] identifying and quantifying both the health and nonhealth benefits, [including] . . . Health effects (mortality, Acute Morbidity, Chronic Morbidity), Soiling, and Materials Damages. . . . Table 1 summarizes the aggregate benefits [and costs] of . . . alternative standards. . . . [This] analysis indicates that standard "F" will generate net benefits (total benefits less costs) of $13–$26 billion.[2]

Following out the logic of its cost-benefit analysis, the Council on Environmental Quality concluded that standard "F" in Table 1 was preferable to the other alternatives because it would produce the most net benefits for society.

The cost-benefit analysis used by the Council on Environmental Quality is a version of what has traditionally been called "utilitarianism." "Utilitarianism" is a general term for any view that holds that actions and policies should be evaluated on the basis of the benefits and costs they will impose on society. In any situation, the "right" action or policy is the one that will produce the greatest net benefits or the lowest net costs (when all alternatives have only net costs).

The Council on Economic Quality restricted "costs" and "benefits" to *economic* costs and benefits (such as medical costs, loss of income, and

TABLE 1. Benefits and Costs of Six Alternative Particulate Standards

SPECIFICATIONS OF SIX ALTERNATIVE STANDARDS			COSTS AND BENEFITS	
DIAMETER OF PARTICLES CONTROLLED	MAXIMUM AVERAGE NUMBER OF PARTICLES ALLOWED PER DAY DURING THE ENTIRE YEAR (PER CUBIC METER)	MAXIMUM AVERAGE NUMBER OF PARTICLES ALLOWED IN ANY SINGLE 24-HOUR DAY (PER CUBIC METER)	ESTIMATED TOTAL BENEFITS (MINIMUM AND MAXIMUM IN BILLIONS OF 1980 DOLLARS)	ESTIMATED TOTAL COSTS (IN BILLIONS OF 1980 DOLLARS)
A. less than 10 microns	70	250	$ 8.2–$15.7	$ .50
B. less than 10 microns	55	250	$11.5–$21.8	$ .93
C. less than 10 microns	55	200	$11.9–$22.5	$ .95
D. less than 10 microns	55	150	$13.9–$26.3	$1.26
E. less than 10 microns	48	183	$14.1–$26.6	$1.32
F. all diameters	75	260	$14.4–$27.0	$1.08

Source: Council on Environmental Quality, *Environmental Quality, 1983* (Washington, DC: U.S. Government Printing Office, 1984), p. 182.

damage to buildings) and these were measured in monetary terms. But the "benefits" of an action may include any desirable goods (pleasures, health, lives, satisfactions, knowledge, happiness) produced by the action, and "costs" may include any of its undesirable evils (pain, sickness, deaths, dissatisfaction, ignorance, unhappiness). The inclusive term used to refer to the net benefits of any sort produced by an action is "utility;" hence, the name *utilitarianism* for any theory that advocates selection of that action or policy that maximizes benefits (or minimizes costs).

Many business analysts assume that the best way of evaluating the ethical propriety of a business decision—or any other decision—is by relying on utilitarian cost-benefit analysis.[3] The "socially responsible" course for a business to take is the one that will produce the greatest net benefits for society or impose the lowest net costs. Several government agencies (like the Council on Environmental Quality), many legal theorists, numerous moralists, and a variety of business analysts advocate utilitarianism.[4] We will begin our discussion of ethical principles by examining this popular approach.

Traditional Utilitarianism

Jeremy Bentham (1748–1832) is generally considered the founder of traditional utilitarianism.[5] Bentham sought an objective basis for making value judgments that would provide a common and publicly acceptable norm for determining social policy and social legislation. The most promising way of reaching such an objective ground of agreement, he believed, is by looking at the various policies a legislature could enact and comparing the beneficial and harmful consequences of each. The right course of action from an ethical point of view would be to choose the policy that would produce the greatest amount of utility. Summarized, the utilitarian principle holds that

> *An action is right from an ethical point of view if and only if the sum total utilities produced by that act is greater than the sum total of utilities by any other act the agent could have performed in its place.*

The utilitarian principle assumes that we can somehow measure and add the quantities of benefits produced by an action and subtract from them the measured quantities of harm the action will have, and thereby determine which action produces the greatest total benefits or the lowest total costs. That is, the principle benefits and costs of an action can be measured on a common numerical scale and then added or subtracted from each other.[6] The satisfactions an improved work environment imparts to workers, for example, might be equivalent to five hundred positive units of utility, while the resulting bills that arrive the next month might be equivalent to seven hundred negative units of utility. So the total combined utility of this act (improving the work environment) would be two hundred units of *negative* utility.

When the utilitarian principle says that the right action for a particular occasion is the one that produces more utility than any other possible

action, it does not mean that the right action is the one that produces the most utility for the person performing the action. Rather, an action is right if it produces the most utility for *all* persons affected by the action (including the person performing the action).[7] Nor does the utilitarian principle say that an action is right so long as its benefits outweigh its costs. Rather, utilitarianism holds that in the final analysis only one action is right: that one action whose net benefits are greatest by comparison to the net benefits of all other possible alternatives. A third misunderstanding is to think that the utilitarian principle requires us to consider only the direct and immediate consequences of our actions. Instead, both the immediate and all foreseeable future costs and benefits that each alternative will provide for each individual must be taken into account as well as any significant indirect effects.

Consequently, to ascertain what I ought to do on a particular occasion I must do three things: First, I must determine what alternative actions or policies are available to me on that occasion. When evaluating air pollution standards, for example, the Council on Environmental Quality identified six alternatives it could impose, as indicated in Table 1. Second, for each alternative action I must estimate the direct and indirect benefits and costs that the action would produce for each and every person affected by the action in the foreseeable future. In Table 1, for example, the Council on Environmental Quality estimated the total benefits that each standard would produce for every person in the United States who would benefit from the decrease in pollution associated with that standard. The table also aggregates the estimated total costs that various persons would have to pay if the standard were adopted, including the costs of installing and maintaining industrial air pollution control devices. In making these estimates the council included all the direct and indirect effects it could foresee for the next ten years. Third, the alternative that produces the greatest sum total of utility must be chosen as the ethically appropriate course of action. The Council on Environmental Quality in our example reviewed the estimates given in Table 2.1, compared them all, and concluded that the greatest net benefits lay with standard "F."

Utilitarianism is in many respects an attractive theory. For one thing, it matches fairly nicely the views that we tend to advocate when discussing the choice of government policies and public goods. Most people will agree, for example, that when the government is trying to determine on which public projects it should spend tax monies, the proper course of action would be for it to adopt those projects that objective studies show will provide the greatest benefits for the members of society at the least cost. And this, of course, is just another way of saying that the proper government policies are those that would have the greatest measurable utility for people or, in the words of a famous slogan, those that will produce "the greatest good for the greatest number."

Utilitarianism also seems to fit in rather neatly with the intuitive criteria people employ when discussing moral conduct.[8] When people explain, for

that example, why they have a moral obligation to perform some action, they will often proceed by pointing to the benefits or harms the action will impose upon human beings. Moreover, morality requires that one impartially take everyone's interest equally into account. Utilitarianism meets this requirement insofar as it takes into account the effects actions have on everyone and insofar as it requires one to impartially choose the action with the greatest net utility regardless of who gets the benefits.

Utilitarianism also has the advantage of being able to explain why we hold that certain types of activities are generally morally wrong (lying, adultery, killing), while others are generally morally right (telling the truth, fidelity, keeping one's promises). The utilitarian can say that lying is generally wrong because of the costly effects lying has on our human welfare. When people lie to each other, they are less apt to trust each other and to cooperate with each other. And the less trust and cooperation, the more our welfare declines. On the other hand, telling the truth is generally right because it strengthens cooperation and trust, and thereby improves everyone's well-being. In general, then, it is a good rule of thumb to tell the truth and to refrain from lying. Traditional utilitarians would deny, however, that any kinds of actions are always right or always wrong. They would deny, for example, that dishonesty or theft is necessarily always wrong. If in a certain situation more good consequences would flow from being dishonest than from any other act a person could perform in that situation, then, according to traditional utilitarian theory, dishonesty would be morally right in that particular situation.

Utilitarian views have also been highly influential in economics.[9] A long line of economists, beginning in the nineteenth century, argued that economic behavior could be explained by assuming that human beings always attempt to maximize their utility and that the utilities of commodities can be measured by the prices people are willing to pay for them. With these and a few other simplifying assumptions (such as the use of indifference curves), economists were able to derive the familiar supply and demand curves of sellers and buyers in markets and explain why prices in a perfectly competitive market gravitate toward an equilibrium. More importantly, economists were also able to demonstrate that a system of perfectly competitive markets would lead to a use of resources and to price variations that would enable consumers to maximize their utility (defined in terms of Pareto optimality) through their purchases.[10] On utilitarian grounds, therefore, these economists concluded that such a system of markets is better than any other alternative.

As we noted in the introduction, utilitarianism is also the basis of the techniques of economic cost-benefit analysis.[11] This type of analysis is used to determine the desirability of investing in a project (like a dam, a factory, or a public park) by figuring whether its present and future economic benefits outweigh its present and future economic costs. To calculate these costs and benefits, discounted monetary prices are estimated for all the effects the project will have on the present and future environment and on

present and future populations. Carrying out these sorts of calculations is not always an easy matter, but various methods have been devised for determining the monetary prices of even such intangible benefits as the beauty of a forest (for instance, we might ask how much people pay to see the beauty of a similar privately owned park). If the monetary benefits of a certain public project exceed the monetary costs and if the excess is greater than the excess produced by any other feasible project, then the project should be undertaken. In this form of utilitarianism the concept of utility is restricted to monetarily measurable economic costs and benefits.

Finally, we can note that utilitarianism fits nicely with a value that many people prize: efficiency. Efficiency can mean different things to different people, but for many it means operating in such a way that one produces the most one can with the resources at hand. That is, an efficient operation is one that produces a desired output with the lowest resource input. Such efficiency is precisely what utilitarianism advocates since it holds that one should always adopt that course of action that will produce the greatest benefits at the lowest cost. If we read "desired output" in the place of "benefits," and "resource input" in place of "cost," utilitarianism implies that the right course of action is always the most efficient one.

Problems of Measurement

One major set of problems with utilitarianism is centered on the difficulties encountered when trying to measure "utility."[12] One problem is this: How can the utilities different actions have for different people be measured and compared as utilitarianism requires? Suppose you and I would both enjoy getting a certain job: How can we figure out whether the utility you would get out of having the job is more or less than the utility I would get out of having it? Each of us may be sure that he or she would benefit most from the job, but since we cannot get into each other's skin, this judgment has no objective basis. Since comparative measures of the values things have for different people cannot be made, the critics argue, there is no way of knowing whether utility would be maximized by giving me the job or giving you the job. And if we cannot know which actions will produce the greatest amounts of utility, then we cannot apply the utilitarian principle.

A second problem is that some benefits and costs seem intractable to measurement. How, for example, can one measure the value of health or life?[13] Suppose that installing an expensive exhaust system in a workshop will eliminate a large portion of certain carcinogenic particles that workers might otherwise inhale. And suppose that as a result some of the workers probably will live five years longer. How is one to calculate the value of those years of added life, and how is this value to be quantitatively balanced against the costs of installing the exhaust system?

A third problem is that because many of the benefits and costs of an action cannot be reliably predicted, they also cannot be adequately measured.[14] The beneficial or costly consequences of basic scientific knowledge, for example, are notoriously difficult to predict. Yet suppose that one

has to decide how much to invest in a research program that will probably uncover some highly theoretical, but not immediately usable, information about the universe. How is the future value of that information to be measured, and how can it be weighed against either the present costs of funding the research or the more certain benefits that would result from putting the funds to an alternative use, such as adding a new wing to the local hospital or building housing for the poor?

Yet a fourth problem is that it is unclear exactly what is to count as a "benefit" and what is to count as a "cost."[15] This lack of clarity is especially problematic with respect to social issues that are given significantly different evaluations by different cultural groups. Suppose a bank must decide, for example, whether to extend a loan to the manager of a local pornographic theater or to the manager of a bar that caters to homosexuals. One group of people may see the increased enjoyment of pornography connoisseurs or the increased enjoyment of homosexuals as *benefits* accruing to society. Another group, however, may see these as harmful and hence as *costs*.

The critics of utilitarianism contend that these measurement problems undercut whatever claims utilitarian theory makes to providing an objective basis for determining normative issues. These problems have become especially obvious in debates over the feasibility of corporate social audits.[16] Although business firms have been increasingly pressured to produce an "audit" or report measuring the social costs and benefits resulting from their business activities,[17] their efforts have been stymied by their inability to place quantitative measures on their various programs,[18] and by differences of opinion over what should be counted as a benefit. The only way of resolving these problems is by arbitrarily accepting the valuations of one social group or another. But this in effect bases utilitarian cost-benefit analysis on the subjective biases and tastes of that group.

Utilitarian Replies to Measurement Objections

The defender of utilitarianism has an array of replies ready to counter the measurement objections enumerated above.

First, the utilitarian may argue that, although utilitarianism ideally requires accurate quantifiable measurements of all costs and benefits, this requirement can be relaxed when such measurements are impossible.19 Utilitarianism merely insists that the consequences of any projected act be expressly stated with as much clarity and accuracy as is humanly possible, and that all relevant information concerning these consequences be presented in a form that will allow them to be systematically compared and impartially weighed against each other. Expressing this information in quantitative terms will facilitate such comparisons and weighings. But where quantitative data are unavailable, one may legitimately rely on shared and common sense judgments of the comparative values things have for most people. We know, for example, that by and large cancer is a greater injury than a cold, no matter who has the cancer and who has the cold; similarly, a steak has a greater value as food than a peanut, no matter whose hunger is involved.

The utilitarian can also point to several common-sense criteria that can be used to determine the relative values that should be given to various categories of goods. One criterion, for example, depends on the distinction between "intrinsic" and "instrumental" goods.[20] Instrumental goods are things that are considered valuable only because they lead to other good things. A painful visit to the dentist, for example, is only an instrumental good (unless I happen to be a masochist): It is desired only as a means to health. Intrinsic goods, however, are things that are desirable independently of any other benefits they may produce. Thus, health is an intrinsic good: It is desired for its own sake. (Many things, of course, have both intrinsic and instrumental value. I may go skiing, for example, both because skiing is a means to health and because I enjoy skiing for itself.) Now it is clear that intrinsic goods take priority over instrumental goods. Under most circumstances, for example, money, which is an instrumental good, must not take priority over life and health, which have intrinsic values.

A second common-sense criterion that can be used to weigh goods turns on the distinction between needs and wants.[21] To say that someone *needs* something is to say that without it he or she will be harmed in some way. People's "basic" needs consist of their needs for things without which they will suffer some fundamental harm such as injury, illness, or death. Among a person's basic needs are the food, clothing, and housing required to stay alive; the medical care and hygienic environment required to remain healthy; and the security and safety required to remain free from injury. On the other hand, to say that a person *wants* something is to say that the person desires it: The person believes it will advance his or her interests in some way. A need, of course, may also be a want: If I know I need something then I may also want it. Many wants, however, are not needs but simply desires for things without which the individual would not suffer any fundamental harm. I may want something simply because I enjoy it, even though it is a luxury I could as well do without. Desires of this sort that are not also needs are called "mere wants." In general, satisfying a person's basic needs is more valuable than satisfying his or her mere wants. If people do not get something for which they have a basic need, they may be injured in a way that makes it impossible for them to enjoy the satisfaction of any number of mere wants. Since the satisfaction of a person's basic needs makes possible not only the intrinsic values of life and health but also the enjoyment of most other intrinsic values, satisfaction of the basic needs has a value that is greater than that of satisfying mere wants.

But these common-sense methods of weighing goods are only intended to aid us in situations where quantitative methods fail. In actual fact the consequences of many decisions are relatively amenable to quantification, the convinced utilitarian will claim. This constitutes the utilitarian's second major reply to the measurement objections outlined above.

The most flexible method of providing a common quantitative measure for the benefits and costs associated with a decision, the utilitarian may hold, is in terms of their monetary equivalents.[22] Basically this implies that

the value a thing has for a person can be measured by the price the person is willing to pay for it. If a person will pay twice as much for one thing as for another, then that thing has exactly twice the value of the other for that person. In order to determine the average values items have for a group of people, then, one need merely look at the average prices given to those items when everyone is allowed to bid for them on open markets. In short, market prices can serve to provide a common quantitative measure of the various benefits and costs associated with a decision. In general, to determine the value of a thing one need merely ask what it sells for on an open market. If the item does not sell on an open market, then one can ask what similar items are selling for.

The use of monetary values also has the advantage of allowing one to take into account the effects of the passage of time and the impact of uncertainty.[23] If the known monetary costs or benefits lie in the future, then their present values can be determined by discounting them at the appropriate rate of interest. If the monetary costs or benefits are only probable and not certain, then their expected values can be computed by multiplying the monetary costs or benefits by the appropriate probability factor.

A standard objection against using monetary values to measure all costs and benefits is that some goods, in particular health and life, cannot be priced. The utilitarian may argue, however, that not only is it possible to put a price on health and life but that we do so almost daily. Anytime people place a limit on the amount of money they are willing to pay to reduce the risk that some object poses to their lives, they have set an implicit price on their own lives. For example, suppose that people are willing to pay $5.00 for a piece of safety equipment that will reduce the probability of their being killed in an auto accident from .00005 to .00004, but they are unwilling to pay any more than that. Then, in effect, they have implicitly decided that .00001 of a life is worth $5, or in other words, that a life is worth $500,000. Such pricing is inevitable and necessary, the utilitarian may hold, so long as we live in an environment in which risks to health and life can be lowered only by giving up (trading off) other things that we may want and on which we set a clear price.

Finally, the utilitarian may say, where market prices are incapable of providing quantitative data for comparing the costs and benefits of various decisions, other sorts of quantitative measures are available.[24] Should people disagree, for example, as they often do, over the harmful or beneficial aspects of various sexual activities, then sociological surveys or political votes can be used to measure the intensity and extensiveness of people's attitudes. Economic experts can also provide informed judgments of the relative quantitative values of various costs and benefits. Thus the utilitarian will grant that the problems of measurement encountered by utilitarianism are real enough. But they are at least partially soluble by the various methods enumerated above. There are, however, other criticisms of utilitarianism.

Problems with Rights and Justice

The major difficulty with utilitarianism, according to some critics, is that it is unable to deal with two kinds of moral issues: those relating to *rights*[25] and those relating to *justice*.[26] That is, the utilitarian principle implies that certain actions are morally right when in fact they are unjust or they violate people's rights. Some examples may serve to indicate the sort of difficult "counter-examples" critics pose for utilitarianism.

First, suppose that your uncle had an incurable and painful disease, so that as a result he was quite unhappy but does not choose to die. Although he is hospitalized and will die within a year, he continues to run his chemical plant. Because of his own misery he deliberately makes life miserable for his workers and has insisted on not installing safety devices in his chemical plant, although he knows that as a result one worker will certainly lose his life over the next year. You, his only living relative, know that on your uncle's death you will inherit his business and will not only be wealthy and immensely happy, but also intend to prevent any future loss of life by installing the needed safety devices. You are cold-blooded, and correctly judge that you could secretly murder your uncle without being caught and without your happiness being in any way affected by it afterwards. If it is possible for you to murder your uncle without in any way diminishing anyone else's happiness, then according to utilitarianism you have a moral obligation to do so. By murdering your uncle, you are trading his life for the life of the worker, and you are gaining your happiness while doing away with his unhappiness and pain: The gain is obviously on the side of utility. However, the critics of utilitarianism claim, it seems quite clear that the murder of your uncle would be a gross violation of his right to life. Utilitarianism has led us to approve an act of murder that is an obvious violation of an individual's most important right.

Second, utilitarianism can also go wrong, according to the critics, when it is applied to situations that involve social justice. Suppose, for example, that the fact that they are paid subsistence wages forces a small group of migrant workers to continue doing the most undesirable agricultural jobs in an economy but produces immense amounts of satisfaction for the vast majority of society's members, since they enjoy cheap vegetables and savings that allow them to indulge other wants. Suppose also that the amounts of satisfaction thereby produced, when balanced against the unhappiness and pain imposed upon the small group of farm workers, results in a greater net utility than would exist if everyone had to share the burdens of farm work. Then, according to the utilitarian criterion, it would be morally right to continue this system of subsistence wages for farm workers. Yet to the critics of utilitarianism, a social system that imposes such unequal sharing of burdens is clearly immoral and offends against justice. The great benefits the system may have for the majority does not justify the extreme burdens that it imposes on a small group. The shortcoming this counter-example reveals is that utilitarianism allows benefits and burdens to be distributed among the members of society in any way whatsoever, so

long as the total amount of benefits is maximized. But in fact, some ways of distributing benefits and burdens (like the extremely unequal distributions involved in the counter-example) are unjust, regardless of how great the store of benefits such distributions produce. Utilitarianism looks only at how much utility is produced in a society and fails to take into account how that utility is distributed among the members of society.

Utilitarian Replies to Objections on Rights and Justice

To deal with the sorts of counter-examples that critics of traditional utilitarianism have offered, utilitarians have recently proposed an important and influential alternative version of utilitarianism called "rule-utilitarianism."[27] The basic strategy of the rule-utilitarian is to limit utilitarian analysis to the evaluations of moral rules. According to the rule-utilitarian, when trying to determine whether a particular *action* is ethical, one is never supposed to ask whether that particular action will produce the greatest amount of utility. Instead, one is supposed to ask whether the action is required by the correct moral rules that everyone should follow. If the action is required by such rules, then one should carry out the action. But what are the "correct" moral rules? It is only this second question, according to the rule-utilitarian, that is supposed to be answered by reference to maximizing utility. The correct moral rules are those that would produce the greatest amount of utility if everyone were to follow them. An example may make this clear.

Suppose I am trying to decide whether or not it is ethical for me to fix prices with a competitor. Then, according to the rule-utilitarian, I should not ask whether this particular instance of price-fixing will produce more utility than anything else I can do. Instead, I should first ask myself: What are the correct moral rules with respect to price-fixing? Perhaps I might conclude, after some thought, that the following list of rules includes all the candidates:

1. Managers are never to meet with competitors for the purpose of fixing prices.
2. Managers may always meet with competitors for the purpose of fixing prices.
3. Managers may meet with competitors for the purpose of fixing prices when they are losing money.

Which of these three is the correct moral rule? According to the rule-utilitarian, the correct moral rule is the one that would produce the greatest amount of utility for everyone affected. Let us suppose that after analyzing the economic effects of price-fixing, I conclude that within our economic and social circumstances people would benefit much more if everyone followed rule 1 than if everyone followed rule 2 or 3. If this is so, then rule 1 is the correct moral rule concerning price-fixing. Now that I know what the correct moral rule on price-fixing is, I can go on to ask a second question: Should I engage in this particular act of fixing prices? To answer this second question I only have to ask: What is required by the correct moral rules? As we have already noted, the correct rule is to never fix prices. Consequently, even if on this particular occasion, fixing prices

actually would produce more utility than not doing so, I am, nonetheless, ethically obligated to refrain from fixing prices because this is required by the rules from which everyone in my society would most benefit.

The theory of the rule-utilitarian, then, has two parts, which we can summarize in the following two principles:

I. An action is right from an ethical point of view if and only if the action would be required by those moral rules that are correct.

II. A moral rule is correct if and only if the sum total of utilities produced if everyone were to follow that rule is greater than the sum total utilities produced if everyone were to follow some alternative rule.

Thus, according to the rule-utilitarian, the fact that a certain action would maximize utility on one particular occasion does not show that it is right from an ethical point of view.

For the rule-utilitarian, the flaw in the counter-examples that the critics of traditional utilitarianism offer is that in each case the utilitarian criterion is applied to particular actions and not to rules. Instead, the rule-utilitarian would urge, we must use the utilitarian criterion to find out what the correct moral *rule* is for each counter-example, and then evaluate the particular actions involved in the counter-example only in terms of this rule. Doing this will allow utilitarianism to escape the counter-examples undamaged.

The counter-example involving the rich uncle and the murderous heir, for example, is a situation that deals with killing a sick person. In such situations, the rule-utilitarian might argue, it is clear that a moral rule that forbids killing without the due process of law will, in the long run, have greater utility for society than other kinds of rules. Such a rule, therefore, is the correct one to apply to the case. It would be wrong for the heir to kill his uncle because doing so would violate a correct moral rule and the fact that murder would on this particular occasion maximize utility is irrelevant.

The case dealing with subsistence wages, the rule-utilitarian would argue, should be treated similarly. It is clear that a rule that forbade unnecessary subsistence wages in societies would in the long run result in more utility than a rule which allowed them. Such a rule would therefore be the correct rule to invoke when asking whether practicing "wage slavery" is morally permissible, and the practice would then be rejected as ethically wrong even if it would maximize utility on a particular occasion.

The ploy of the rule-utilitarian, however, has not satisfied the critics of utilitarianism, who have pointed out an important difficulty in the rule-utilitarian position: According to its critics, rule-utilitarianism is traditional utilitarianism in disguise.[28] These critics argue that rules that allow (beneficial) exceptions will produce more utility than rules that do not allow any exceptions. But once a rule allows these exceptions, the critics claim, it will allow the same injustices and violations of rights that traditional utilitarianism allows. Some examples may help us see more clearly what these critics mean. The critics claim that if a rule allows people to make an exception whenever an exception will maximize utility, then it will produce more

utility than it would if it allowed no exceptions. For example, more utility would be produced by a rule which says "People are not to be killed without due process *except when doing so will produce more utility than not doing so,*" than would be produced by a rule that simply says "People are not to be killed without due process." The first rule will *always* maximize utility, while the second rule will maximize utility only *most* of the time (because the second rule rigidly requires due process even when it would be more beneficial to dispense with due process). Since the rule-utilitarian holds that the "correct" moral rule is the one that produces more utility, he must hold that the correct moral rule is the one which allows exceptions when exceptions will maximize utility. But once the exception clause is made part of the rule, the critics point out, then applying the rule to an action will have exactly the same consequences as applying the traditional utilitarian criterion directly to the action since the utilitarian criterion is now part of the rule. In the case of the sick uncle and murderous heir, for example, the rule that "People are not to be killed without due process except when doing so will produce more utility than not doing so," will now allow the heir to murder his uncle exactly as traditional utilitarianism did before. Similarly, more utility would be produced by a rule that says, "Subsistence wages are prohibited *except in those situations where they will maximize utility,*" than would be produced by a rule that simply says, "Subsistence wages are prohibited." So the rule that allows exceptions will be the "correct" one. But this "correct" rule will now allow the society we described earlier to institute wage slavery, exactly as traditional utilitarianism did. Rule-utilitarianism, then, is a disguised form of traditional utilitarianism and the counter-examples that set difficulties for one seem to set similar difficulties for the other.

Many rule utilitarians do not admit that rules produce more utility when they allow exceptions. Since human nature is weak and self-interested, they claim, humans would take advantage of any allowable exceptions and this would leave everyone worse off. Other utilitarians refuse to admit that the counter-examples of the critics are correct. They claim that if killing a person without due process really would produce more utility than all other feasible alternatives, then all other alternatives must have greater evils attached to them. And if this is so, then killing the person without due process really would be morally right. Similarly, if in certain circumstances subsistence wages really are the least (socially) injurious means to employ in getting a job done, then in those circumstances subsistence wages are morally right exactly as utilitarianism implies.

There are two main limits to utilitarian methods of moral reasoning, therefore, although the precise extent of these limits is controversial. First, utilitarian methods are difficult to use when dealing with values that are difficult and perhaps impossible to measure quantitatively. Second, utilitarianism by itself seems to deal inadequately with situations that involve rights and justice, although some have tried to remedy this deficiency by restricting utilitarianism to the evaluation of rules. To clarify our ideas on these

issues, the next two sections will examine methods of moral reasoning that explicitly deal with the two moral issues on which utilitarianism seems to fall short: rights and justice.

3.2 Rights

In May 1984, Coca-Cola executives began meeting with Guatemalan union leaders who had forcibly occupied a Coca-Cola plant in Guatemala.[29] Local owners of the plant complained that the workers were violating their "property rights." Workers responded that union organizers had suffered six years of "serious violations of human rights and labor union rights," including the kidnapping and murder of several union leaders and continual threats. Five years earlier, stockholders of Coca-Cola Company, alarmed by the growing violence, had submitted the following resolution at their shareholders' meeting:

> Be it resolved that the shareholders request the Board of Directors of Coca-Cola to develop . . . a code of minimum labor standards required of its franchise bottlers and the procedures for their enforcement by the Company.
>
> In preparing this code, the Board should consider the following principles recognized by most employer associations and governments:
>
> A. The right of workers to organize and operate their own associations or unions without interference from management in the adoption of rules, election of officers, administration of affairs and determination of programs;
>
> B. The right of each individual worker to belong to such association or union without discrimination in employment, task assignment, or promotion;
>
> C. The right of such associations or unions to negotiate collective agreements and grievance procedures for and on behalf of the members, and to represent their members before management wherever disputes arise;
>
> D. The right of such associations or unions to join others to form regional or national organizations, and international trade union bodies. (Excerpt from Coca-Cola Company 1979 proxy statement)[30]

Coca-Cola's board of directors opposed the resolution and it was voted down. A similar resolution the following year was also opposed and defeated. Finally, on July 10, 1984 Coca-Cola executives announced that they had reached a labor union settlement with the Guatemala workers.

The concept of a "right" obviously appears in many of the moral arguments and moral claims invoked in business discussions. Employees, for example, argue that they have a "right to equal pay for equal work"; managers assert that unions violate their "right to manage"; investors complain that taxation violates their "property rights"; consumers claim that they have a "right to know." Moreover, public documents often employ the

notion of a right. The American Constitution itself enshrines a long "Bill of Rights," defined largely in terms of the duties the federal government has to not interfere in certain areas of its citizens' lives. The Declaration of Independence was based on the idea that "all men . . . are endowed by their Creator with certain unalienable rights . . . among these are life, liberty, and the pursuit of happiness." In 1948 the United Nations adopted a "Universal Declaration of Human Rights," which claimed that "all human beings" are entitled, among other things, to:

> the right to own property alone as well as in association with others . . .
>
> the right to work, to free choice of employment, to just and favorable conditions of work, and to protection against unemployment . . .
>
> the right to just and favorable remuneration ensuring for [the worker] and his family an existence worthy of human dignity . . .
>
> the right to form and to join trade unions . . .
>
> the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay . . .

The concept of a right and the correlative notion of duty, then, lie at the heart of much of our moral discourse. This section is intended to provide an understanding of these concepts and of some of the major kinds of ethical principles and methods of analysis that underlie their use.

The Concept of a Right

In general, a right is an individual's entitlement to something.[31] A person has a right when that person is entitled to act in a certain way or is entitled to have others act in a certain way toward him or her. The entitlement may derive from a *legal* system that permits or empowers the person to act in a specified way or that requires others to act in certain ways toward that person; the entitlement is then called a "legal right." The American Constitution, for example, guarantees all citizens the "right to freedom of speech" and commercial statutes specify that each party to a valid contract has a "right" to whatever performance the contract requires from the other person. Legal rights are limited, of course, to the particular jurisdiction within which the legal system is in force.

Entitlements can also derive from a system of *moral* standards independently of any particular legal system. The "right to work," for example, is not guaranteed by the American Constitution, but many argue that this is a right that all human beings possess. Such rights, which are called "moral rights" or "human rights," are based on moral norms and principles that specify that all human beings are permitted or empowered to do something or are entitled to have something done for them. Moral rights, unlike legal rights, are usually thought of as being universal insofar as they are rights that all human beings of every nationality possess to an equal extent simply by virtue of being human beings. Unlike legal rights, moral rights are not limited to a particular jurisdiction. If humans have a moral right not to be

tortured, for example, then this is a right that human beings of every nationality have regardless of the legal system under which they live.

Rights are powerful devices whose main purpose is that of enabling the individual to choose freely whether to pursue certain interests or activities and of protecting those choices. But in our ordinary discourse we use the term "right" to cover a variety of situations in which individuals are enabled to make such choices in very different ways. First, we sometimes use the term "right" to indicate the mere *absence of prohibitions* against pursuing some interest or activity. For example, I have a "right" to do whatever the law or morality does not positively forbid me to do. In this weak sense of a "right" the enabling and protective aspects are minimal. Secondly, we sometimes use the term "right" to indicate that a person is *authorized or empowered* to do something either to secure the interests of others or to secure his own interests. An army or police officer, for example, acquires legal rights of command over subordinates which enable him to pursue the security of others, while a property owner acquires legal property rights which enable her to do as she wishes with the property. Third, the term "right" is sometimes used to indicate the *existence of prohibitions or requirements* on others which enable the individual to pursue certain interests or activities. For example the American Constitution is said to give citizens the right to free speech because it contains a prohibition against government limits on speech, and federal law is said to give citizens the right to an education because it contains a requirement that each state must provide free public education for all its citizens.[32]

The most important moral rights—and those that will concern us in this chapter—are rights which *impose prohibitions or requirements* on others and which thereby enable individuals to choose freely whether to pursue certain interests or activities. These moral rights (we will mean these kinds of rights when we use the term "moral rights") identify those activities or interests that the individual is empowered to pursue, or must be left free to pursue, or must be helped to pursue, as he or she chooses; and they protect the individual's pursuit of those interests and activities within the boundaries specified by the rights. These kinds of moral rights have three important features that define these enabling and protective functions.

First, moral rights are tightly correlated with duties.[33] This is because one person's moral right generally can be defined—at least partially—in terms of the moral duties other people have toward that person. To have a moral right necessarily implies that others have certain duties toward the bearer of that right. My moral right to worship as I choose, for example, can be defined in terms of the moral duties other people have to not interfere in my chosen form of worship. And the moral right to a suitable standard of living can be defined in terms of the duty that governments (or some other agents of society) have to ensure a suitable standard of living for their citizens. Duties, then, are generally the other side of moral rights: If I have a moral right to do something, then other people have a moral duty not to interfere with me when I do it; and if I have a moral right to have someone

do something for me, then that other person (or group of persons) has a moral duty to do it for me. Thus, moral rights impose correlative duties on others, either duties of noninterference or duties of positive performance.

In some cases, the correlative duties imposed by a right may fall not on any specific individual but on all the members of a group. If a person, for example, has the "right to work" (a right mentioned in the United Nations' Universal Declaration of Human Rights), this does not necessarily mean that any specific employer has a duty to provide that person with a job. Rather, it means that all the members of society, through their public agencies, have the duty of ensuring that jobs are available to workers.

Second, moral rights provide individuals with autonomy and equality in the free pursuit of their interests.[34] That is, a right identifies activities or interests which people must be left free to pursue or not pursue as they themselves choose (or must be helped to pursue as they freely choose) and whose pursuit must not be subordinated to the interests of others except for special and exceptionally weighty reasons. If I have a right to worship as I choose, for example, then this implies that I am free to worship if and as I personally choose, and that I am not dependent on anyone's permission in order to worship. It also implies that I cannot generally be forced to stop worshipping on the grounds that society will gain more benefits if I am kept from worshipping: The gains of others do not generally justify interference with a person's pursuit of an interest or an activity when that pursuit is protected by a moral right. To acknowledge a person's moral right, then, is to acknowledge that there is an area in which the person is not subject to my wishes and in which the person's interests are not subordinate to mine. There is an area, in short, within which we stand as autonomous equals.

Thirdly, moral rights provide a basis for justifying one's actions and for invoking the protection or aid of others.[35] If I have a moral right to do something, then I have a moral justification for doing it. Moreover, if I have a right to do something, then others have no justification for interfering with me. On the contrary, others are justified in restraining any persons who try to prevent me from exercising my right or others may have a duty to aid me in exercising my right. When a stronger person helps a weaker one defend his or her rights, for example, we generally acknowledge that the act of the stronger person was justified.

Because moral rights have these three features, they provide bases for making moral judgments that differ substantially from utilitarian standards.[36] First, moral rights express the requirements of morality from the point of view of the *individual* while utilitarianism expresses the requirements of morality from the point of view of *society as a whole*. Moral standards concerned with rights indicate what is due to the individual from others and they promote the individual's welfare and protect the individual's choices against encroachment by society. Utilitarian standards promote society's aggregate utility, and they are indifferent to the individual's welfare except insofar as it affects this social aggregate. Second, rights limit the validity of appeals to social benefits and to numbers. That is, if a person has a right to

do something, then it is wrong for anyone to interfere, even though a large number of people might gain much more utility from such interference. If I have a right to life, for example, then it is morally wrong for someone to kill me, even if many others would gain much more from my death than I will ever gain from living. And if the members of a minority group have a right to free speech then the majority must leave the minority free to speak, even if the majority is much more numerous and intensely opposed to what the minority will say.

Although rights generally override utilitarian standards, they are not immune from all utilitarian considerations: If the utilitarian benefits or losses imposed on society become great enough, they might be sufficient to breach the protective walls the right sets up around a person's freedom to pursue his or her interests. In times of war or major public emergencies, for example, it is generally acknowledged that civil rights may legitimately be restricted for the sake of "the public welfare." And the property rights of factory owners may be restricted in order to prevent pollution that is imposing major damages on the health of others. The more important is the interest protected by a right, the larger the utilitarian trade-offs must be: Rights erect higher walls around more important interests, and so the level of social benefits or costs needed to breach the walls must be greater.

Negative and Positive Rights

A large group of rights called "negative rights" is distinguished by the fact that its members can be defined wholly in terms of the duties others have to *not* interfere in certain activities of the person who holds a given right.[37] For example, if I have a right to privacy, this means that every other person, including my employer, has the duty not to intervene in my private affairs. And if I have a right to use, sell, or destroy my personal business assets, this means that every other person has the duty not to prevent me from using, selling, or destroying my business property as I choose.

On the other hand, "positive rights" do more than impose negative duties. They also imply that some other agents (it is not always clear who) have the *positive* duty of providing the holder of the right with whatever he or she needs to freely pursue his or her interests.[38] For example, if I have a right to an adequate standard of living, this does not mean merely that others must not interfere: It also means that if I am unable to provide myself with an adequate income, then I must be provided with such an income (perhaps by the government). Similarly, the right to work, the right to an education, the right to adequate health care, and the right to social security are all rights that go beyond noninterference to also impose a positive duty of providing people with something when they are unable to provide it for themselves.

Positive rights were not emphasized until the twentieth century. Negative rights were often employed in the seventeenth and eighteenth centuries by writers of manifestos (like the Declaration of Independence and the Bill of Rights), who were anxious to protect individuals against the

encroachments of monarchical governments. Positive rights became important in the twentieth century when society increasingly took it upon itself to provide its members with the necessities of life that they were unable to provide for themselves. The United Nations declaration, for example, is influenced by this trend when it provides for the rights "to food, clothing, housing, and medical care." The change in the meaning of the phrase "the right to life" is another indication of the rising importance of positive rights. Whereas the eighteenth century interpreted the "right to life" as the negative right to not be killed (this is the meaning the phrase has in the Declaration of Independence), the twentieth century has reinterpreted the phrase to refer to the positive right to be provided with the minimum necessities of life.

Much of the debate over moral rights has concentrated on whether negative or positive rights should be given priority. So-called "conservative" writers, for example, have claimed that government efforts should be limited to enforcing negative rights and not expended on providing positive rights.[39] This is the crux of the debate over whether government efforts should be restricted to protecting property and securing law and order (that is, protecting people's negative rights) or whether government should in addition provide the needy with jobs, job training, housing, medical care, and other welfare benefits (that is, provide for people's positive rights), So-called "liberal" authors, on the other hand, hold that positive rights have as strong a claim to being honored as negative rights and that, consequently, government has a duty to provide for both.[40]

Contractual Rights and Duties

Contractual rights and duties (sometimes called "special" rights and duties or "special obligations") are the limited rights and correlative duties that arise when one person enters an agreement with another person.[41] For example, if I contract to do something for you, then you are entitled to my performance: You acquire a contractual *right* to whatever I promised, and I have a contractual duty to perform as I promised.

Contractual rights and duties are distinguished, first, by the fact that they attach to *specific* individuals and the correlative duties are imposed only on other *specific* individuals. If I agree to do something for you, everyone else does not thereby acquire new rights over me, nor do I acquire any new duties toward them. Secondly, contractual rights arise out of a specific transaction between particular individuals. Unless I actually make a promise or enter some other similar arrangement with you, you do not acquire any contractual rights over me.

Thirdly, contractual rights and duties depend on a publicly accepted system of rules that define the transactions that give rise to those rights and duties.[42] Contracts, for example, create special rights and duties between people only if these people recognize and accept a system of conventions that specifies that by doing certain things (such as signing a paper) a person undertakes an obligation to do what he or she agrees to do. When a person

goes through the appropriate actions, other people know that person is putting himself or herself under an obligation because the publicly recognized system of rules specifies that such actions count as a contractual agreement. And because the publicly recognized system obligates or requires the person to do what he or she says, or suffer the appropriate penalties, everyone understands that the person can be relied on to keep the contract and that others can act in accordance with this understanding.

Without the institution of contract and the rights and duties it can create, modern business societies could not operate. Virtually every business transaction at some point requires one of the parties to rely on the word of the other party to the effect that the other party will pay later, will deliver certain services later, or will transfer goods of a certain quality and quantity. Without the social institution of contract, individuals in such situations would be unwilling to rely on the word of the other party, and the transactions would never take place. The institution of contracts provides a way of ensuring that individuals keep their word, and this in turn makes it possible for business society to operate. Employers, for example, acquire contractual rights to the services of their employees in virtue of the work contract that employees enter, and sellers acquire contractual rights to the future cash that credit buyers agree to give them.

Contractual rights and duties also provide a basis for the special duties or obligations that people acquire when they accept a position or a role within a legitimate social institution or an organization. Married parents, for example, have a special duty to care for the upbringing of their children; doctors have a special duty to care for the health of their patients; and managers have a special duty to care for the organization they administer. In each of these cases, there is a publicly accepted institution (such as a familial, medical, or corporate institution) that defines a certain position or role (such as parent, doctor, or manager) upon which the welfare of certain vulnerable persons (such as the parent's children, the doctor's patients, the manager's corporate constituencies) depends. Society attaches to these institutional roles special duties of caring for these vulnerable dependents and of protecting them from injury, duties that the person who enters the role knows he or she is expected to fulfill. When a person freely enters the role knowing what duties society attaches to the acceptance of the role, that person in effect enters an agreement to fulfill those duties. The existence of a system of contractual obligations ensures that individuals fulfill these agreements by laying on them the public obligations that all agreements carry. As a result, these familial, medical, and corporate institutions can continue to exist and their vulnerable members are protected against harm. We should recall here that a person's institutional duties are not unlimited. In the first chapter we noted that as a "loyal agent," the manager's duties to care for the corporation are limited by the ethical principles that govern any person. Similarly, a doctor cannot murder other people in order to obtain vital organs for the patients whom he or she has a duty to care for.

What kind of ethical rules govern contracts? The system of rules that underlies contractual rights and duties has traditionally been interpreted as including several moral constraints:[43]

1. Both of the parties to a contract must have full knowledge of the nature of the agreement they are entering.
2. Neither party to a contract must intentionally misrepresent the facts of the contractual situation to the other party.
3. Neither party to the contract must be forced to enter the contract under duress or coercion.
4. The contract must not bind the parties to an immoral act.

Contracts that violate one or more of these four conditions have traditionally been considered void.[44] Below we shall discuss the basis of these sorts of conditions.

A Basis for Moral Rights: Kant

How do we know that people have rights? This question can be answered in a fairly straightforward way when it is asked about legal rights: A person has certain legal rights because the person lives within a legal system that guarantees those rights. But what is the basis of moral rights?

Utilitarians have suggested that utilitarian principles can provide a satisfactory basis for moral rights: People have moral rights because the possession of moral rights maximizes utility. It is doubtful, however, that utilitarianism can serve as an adequate basis for moral rights. To say that someone has a moral right to do something is to say that he or she is entitled to do it regardless of the utilitarian benefits it provides for others. Utilitarianism cannot easily support such a nonutilitarian concept.

A more satisfactory foundation for moral rights is provided by the ethical theory developed by Immanuel Kant (1724–1804). Kant in fact attempts to show that there are certain moral rights and duties that all human beings possess, regardless of any utilitarian benefits that the exercise of those rights and duties may provide for others.

Kant's theory is based on a moral principle that he calls the "categorical imperative" and that requires that everyone should be treated as a free person equal to everyone else. That is, everyone has a moral right to such treatment, and everyone has the correlative duty to treat others in this way. Kant provides at least two ways of formulating this basic moral principle; each formulation serves as an explanation of the meaning of this basic moral right and correlative duty.

The First Formulation of Kant's Categorical Imperative

Kant's first formulation of the categorical imperative goes like this: "I ought never to act except in such a way that I can also will that my maxim should become a universal law."[45] A "maxim" for Kant is the reason a person in a certain situation has for doing what he or she plans to do. And a maxim

would "become a universal law" if every person in a similar situation chose to do the same thing for the same reason. Kant's first version of the categorical imperative, then, comes down to the following principle:

> *An action is morally right for a person in a certain situation if and only if the person's reason for carrying out the action is a reason that he or she would be willing to have every person act on, in any similar situation.*

An example may help to clarify the meaning of Kant's principle. Suppose that I am trying to decide whether to fire an employee because I do not like the employee's race. According to Kant's principle, I must ask myself whether I would be willing to have an employer fire any employee whenever the employer does not like the race of his or her employee. In particular, I must ask myself whether I would be willing to be fired myself should my employer not like my race. If I am not willing to have everyone act in this way, even toward me, then it is morally wrong for me to act in this way toward others. A person's reasons for acting, then, must be "reversible": One must be willing to have all others use those reasons even against oneself. There is an obvious similarity, then, between the categorical imperative and the so-called "golden rule": "Do unto others as you would have them do unto you."

Kant points out that sometimes it is not even possible to conceive of having everyone act on a certain reason, much less be willing to have everyone act on that reason.[46] For example, suppose that I am considering breaking a contract because it has committed me to do something I do not want to do. Then I must ask whether I would be willing to have everyone break any contract that one did not want to keep. But it is impossible to even conceive of everyone making and then breaking contracts in this way since if everyone knew that any contract could be broken, then people would cease making contracts altogether (what possible purpose would they serve?) and contracts would no longer exist. Consequently, since it is impossible to conceive of everyone making and breaking contracts in this way, it is also impossible for me to be willing to have everyone act like this (how can I want something I cannot even conceive?). It would be wrong, therefore, for me to break a contract simply because I do not want to keep it. A person's reasons for acting, then, must also be universalizable: It must be possible, at least in principle, for everyone to act on those reasons.

The first formulation of the categorical imperative, then, incorporates two criteria for determining moral right and wrong: universalizability and reversibility.

UNIVERSALIZABILITY: The person's reasons for acting must be reasons that everyone *could* act on at least in principle.

REVERSIBILITY: The person's reasons for acting must be reasons that he or she would be *willing* to have all others use, even as a basis of how they treat him or her.

This formulation of Kant's categorical imperative is attractive for a number of reasons, not the least of which is that it seems to capture some fundamental aspects of our moral views. Frequently, for example, we say to a person who has done something wrong or who is about to do something wrong: How would you like it if he did that to you? or How would you like it if you were in her place?, thereby invoking something like reversibility. Or we may ask, What if everybody did that? and thereby invoke universalizability.

Unlike the principle of utilitarianism, Kant's categorical imperative focuses on a person's interior motivations and not on the consequences of one's external actions. Moral right and wrong, according to Kantian theory, are distinguished not by what a person accomplishes, but by the reasons the person has for what he tries to do.[47] Kant argues that to the extent that a person performs an action merely because it will advance the person's own future interests or merely because the person finds the action pleasurable, the action "has no moral worth." A person's action has "moral worth" only to the degree that it is *also* motivated by a sense of "duty," that is, a belief that it is the right way for people to behave. And, Kant claims, to be motivated by a sense of "duty" is to be motivated by reasons that I wish everyone would act upon. Consequently, my action has "moral worth" (that is, it is morally right) only to the extent that it is motivated by reasons that I would be willing to have every person act on. Hence the categorical imperative.[48]

The Second Formulation of Kant's Categorical Imperative

The second formulation Kant gives of the categorical imperative is this: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end."[49] Or, never treat people *only* as means, but always also as ends.

What Kant means by "treating humanity as an end" is that I should treat each human being as a being whose existence as a free rational person should be promoted. For Kant this means two things: (1) respecting each person's freedom by treating people only as they have freely consented to be treated beforehand and (2) developing each person's capacity to freely choose for him or herself the aims he or she will pursue.[50] On the other hand, to treat a person only as a means is to use the person only as an instrument for advancing my own interests and involves neither respect for, nor development of, the person's capacity to choose freely. Kant's second version of the categorical imperative can be expressed in the following principle:

> *An action is morally right for a person if and only if in performing the action, the person does not use others merely as a means for advancing his or her own interests, but also both respects and develops their capacity to choose freely for themselves.*

This version of the categorical imperative implies that human beings each have an equal dignity that sets them apart from things like tools or machines and is incompatible with their being manipulated, deceived, or

otherwise unwillingly exploited to satisfy the self-interests of another. The principle in effect says that people should not be treated as objects incapable of free choice. By this principle, an employee may legitimately be asked to perform the unpleasant (or even dangerous) tasks involved in a job if the employee freely consented to take the job knowing that it would involve these tasks. But it would be wrong to subject an employee to health risks *without the employee's knowledge.* In general, deception, force, and coercion fail to respect people's freedom to choose and are therefore immoral (unless, perhaps, a person first freely consented to have force used against himself or herself).

Kant argues that making fraudulent contracts by deceiving others is wrong and that deliberately refraining from giving others help when they need it is also wrong. By deceiving a person into making a contract that that person would not otherwise freely choose to make, I fail to respect that person's freedom to choose and merely use the person to advance my own interests. And by failing to lend needed and easily extended help to another person, I limit what that person is free to choose to do.

The second formulation of the categorical imperative, according to Kant, is really equivalent to the first.[51] The first version says that what is morally right for me must be morally right for others: Everyone is of equal value. If this is so, then no person's freedom should be subordinated to that of others so that the person is used merely to advance the interests of others. And since I myself am of value, I cannot sacrifice myself to mere self-interest. And this, of course, is what the second version of the categorical imperative requires. Both formulations come down to the same thing: People are to treat each other as free and equal in the pursuit of their interests.

Kantian Rights

A large number of authors have held that the categorical imperative (in one or the other of its formulations) explains why people have moral rights.[52] As we have seen, moral rights identify interests that individuals must be left free to pursue as they autonomously choose (or which we must help them pursue as they choose) and whose free pursuit must not be subordinated to our own interests. And that is precisely what both formulations of Kant's categorical imperative require in holding that people must be respected as free and equal in the pursuit of their interests. In short, moral rights identify the specific major areas in which persons must deal with each other as free equals, and Kant's categorical imperative implies that persons should deal with each other in precisely this way. The categorical imperative, however, cannot by itself tell us what particular moral rights human beings have. In order to know what particular rights human beings have, one first must know what interests humans have and must know whether there are good reasons for giving the free pursuit of one interest, rather than another, the protected status of a right (clearly, not all interests can be turned into rights, since interests can conflict with each other). For example, to establish that humans have a right to free speech, one has to show that freedom to say

what one chooses is critically important to human beings and that it is more important than the free pursuit of other conflicting interests that humans may have (such as an interest in repressing ideas that we find distasteful, offensive, or disturbing). Insofar as free speech is critically important, humans must leave each other equally free to speak as they choose: Everyone has a moral right to freedom of speech. But insofar as free speech conflicts with another human interest that can be shown to be of equal or greater importance (such as our interest in not being libeled or defamed), the right to freedom of speech must be limited.

Although later chapters will present various arguments in support of several particular rights, it might be helpful here to give a rough sketch of how some rights have been plausibly defended on the basis of Kant's two formulations of the categorical imperative. First, human beings have a clear interest in being helped by being provided with the work, food, clothing, housing, and medical care they need to live on when they cannot provide these for themselves. Suppose we agree that we would not be willing to have everyone (especially ourselves) deprived of such help when it is needed, and that such help is necessary if a person's capacity to choose freely is to develop and even survive.[53] If so, then no individual ought to be deprived of such help. That is, human beings have *positive rights* to the work, food, clothing, housing, and medical care they need to live on when they cannot provide these for themselves and when these are available.

Second, human beings also have a clear interest in being free from injury or fraud and in being free to think, associate, speak, and live privately as they choose. Suppose we agree that we would be willing to have everyone be free of the interference of others in these areas, and that interference in these areas fails to respect a person's freedom to choose for him or herself.[54] If so, then everyone ought to be free of the interference of others in these areas. That is, human beings have these *negative rights:* the right to freedom from injury or fraud, the right to freedom of thought, freedom of association and freedom of speech, and the right to privacy.

Third, as we have seen, human beings have a clear interest in preserving the institution of contracts. Suppose we agree that we would end up dropping the institution of contracts (which we are unwilling to do) if everyone stopped honoring their contracts or if everyone had to honor even contracts that were made under duress or without full information; and suppose we agree that we show respect for people's freedom by honoring the contracts they freely make with us and by leaving them free and fully informed about any contracts they make with us.[55] If so, then everyone ought to honor his or her contracts and everyone ought to be fully informed and free when making contracts. That is, human beings have a *contractual right* to what they have been promised in contracts, and everyone also has a right to be left free and fully informed when contracts are made.

Each of the rights just described has been sketched in barest outline, and each one requires a great deal more in the way of qualifications, adjust-

ments with other (conflicting) interests, and full supporting arguments. Crude as it is, however, the list provides some idea of how Kant's categorical imperative might be used in establishing positive rights, negative rights, and contractual rights.

Problems with Kant

In spite of the attractiveness of Kant's theory, critics have argued that, like utilitarianism, it has its limitations and inadequacies. A first problem that critics have traditionally pointed out is that Kant's theory is not precise enough to always be useful. One difficulty lies in trying to determine whether or not one would (as the first formulation requires) "be willing to have everyone follow" a certain policy. Although the general thrust of this requirement is usually clear, it sometimes leads to problems. For example, suppose I am a murderer: Would I then be willing to have everyone follow the policy that all murderers should be punished? In a sense I would be willing to, since I would want to be protected from other murderers, but in another sense I would not be willing, since I do not want to be punished myself; which sense is correct?[56] It is also sometimes difficult to determine whether or not (as the second formulation states) one person is using another "merely as a means." Suppose, for example, that an employer pays only minimum wages to her employees and refuses to install the safety equipment they want, yet she says she is "respecting their capacity to freely choose for themselves" because she is willing to let them work elsewhere if they choose. Is she then treating them merely as means or also as ends? Critics complain that they cannot answer such questions because Kant's theory is too vague.[57] There are cases, then, where the requirements of Kant's theory are unclear.

Second, some critics claim that, although we might be able to agree on the kinds of interests that have the status of moral rights, there is substantial disagreement concerning what the *limits* of each of these rights are and concerning how each of these rights should be balanced against other conflicting rights.[58] And Kant's theory does not help us resolve these disagreements. For example, we all agree that everyone should have a right to associate with whomever one wants, as well as a right not to be injured by others. But how should these rights be balanced against each other when a certain association of people begins to injure others? Suppose the loud music of a group of trombone players, for example, disturbs others; or suppose a corporation (which is an association of people) pollutes the air and water on which the health of others depends. Kant's categorical imperative does not tell us how the conflicting rights of these persons should be adjusted to each other: Which right should be limited in favor of the other?

A defender of Kant, however, can counter this second kind of criticism by holding that Kant's categorical imperative is not intended to tell us how conflicting rights should be limited and adjusted to each other. To decide whether one right should be curtailed in favor of a second right one has to examine the relative importance of the *interests* that each right protects.

What arguments can be given to show, for example, that a corporation's interest in financial gains is more or less important than the health of its neighbors? The answer to this question will determine whether or not a corporation's right to use its property for financial gains should be limited in favor of its neighbors' right not to have their health injured. All that Kant's categorical imperative is meant to tell us is that everyone must have equal moral rights and that everyone must show as much respect for the protected interests of others as he or she wants others to show for his or her own. It does not tell us what interests people have, nor what their relative importance is.

A third group of criticisms that have been made of Kant's theory is that there are counter-examples which show that the theory sometimes goes wrong. Most counter-examples to Kant's theory focus on the criteria of universalizability and reversibility.[59] Suppose that an employer can get away with discriminating against blacks by paying them lower wages than whites for the same work. And suppose also that he is so fanatical in his dislike of blacks that he is willing to accept the proposition that if his own skin were black, employers should also discriminate against him. Then, according to Kant's theory, the employer would be acting morally. But this, according to the critics, is wrong, since discrimination is obviously immoral.

Defenders of a Kantian approach to ethics, of course, would reply that it is the critics, not Kant, who are mistaken. If the employer genuinely and conscientiously would be willing to universalize the principles on which he is acting, then the action is in fact morally right for him.[60] For us, who would be unwilling to universalize the same principle, the action would be immoral. We may also find that it would be morally right for us to impose sanctions on the employer to make him stop discriminating. But, insofar as the employer is trying to remain true to his own universal principles, he is acting conscientiously and, therefore, in a moral manner.

The Libertarian Objection: Nozick

Some important views on rights that are different from the ones we just sketched have been proposed recently by several "libertarian philosophers."

Libertarian philosophers go beyond the general presumption that freedom from human constraint is usually good, to claim that such freedom is necessarily good and that all constraints imposed by others are necessarily evil except when needed to prevent the imposition of greater human constraints. The American philosopher Robert Nozick, for example, claims that the only basic right that every individual possesses is the negative right to be free from the coercion of other human beings.[61] This negative right to freedom from coercion, according to Nozick, must be recognized if individuals are to be treated as distinct persons with separate lives, each of whom has an equal moral weight that may not be sacrificed for the sake of others. The only circumstances under which coercion may be exerted upon a person is when it is necessary to keep him or her from coercing others.

According to Nozick, prohibiting people from coercing others constitutes a legitimate "moral" constraint that rests on "the underlying Kantian principle that individuals are ends and not merely means; they may not be sacrificed or used for achieving of other ends without their consent."[62] Thus Nozick seems to hold that Kant's theory supports his own views on freedom.

Nozick goes on to argue that the negative right to freedom from the coercion of others implies that people must be left free to do what they want with their own labor and with whatever products they manufacture by their labor.[63] And this in turn implies that people must be left free to acquire property, to use it in whatever way they wish, and to exchange it with others in free markets (so long as the situation of others is not thereby harmed or "worsened"). Thus, the libertarian view that coercive restrictions on freedom are immoral (except when needed to restrain coercion itself) is also supposed to justify the free use of property, freedom of contract, the institution of free markets in which individuals can exchange goods as they choose without government restrictions, and the elimination of taxes for social welfare programs. But there is no basis for any *positive* rights nor for the social programs they might require.

Nozick and other libertarians, however, pass too quickly over the fact that the freedom of one person necessarily imposes constraints upon other persons. Such constraints are inevitable, since when one person is granted freedom, other persons must be constrained from interfering with that person. If I am to be free to do what I want with my property, for example, other people must be constrained from trespassing on it and from taking it from me. Even the "free market system" that Nozick advocates depends on an underlying system of coercion: for I can "sell" something only if I first "own" it, and ownership depends essentially on an enforced (coercive) system of property laws. Consequently, since granting a freedom to one person necessarily imposes constraints on others, it follows that if constraints require justification, then freedom will likewise always require justification.

The same point can be made in a different way. Because there are many different kinds of freedoms, the freedom one group of agents is given to pursue some of its interests will usually restrict the freedom other agents have to pursue other conflicting interests. For example, the freedom of corporations to use their property to pollute the environment as they want can restrict the freedom of individuals to breathe clean air whenever they want. And the freedom of employees to unionize as they want can conflict with the freedom of employers to hire whatever nonunion workers they want. Consequently, allowing one kind of freedom to one group entails restricting some other kind of freedom for some other group: A decision in favor of the freedom to pursue one interest implies a decision against the freedom to pursue another kind of interest. This means that we cannot argue in favor of a certain kind of freedom by simply claiming that constraints are always evil and must always be replaced by freedom. Instead, an argument for a specific freedom must show that the interests

that can be satisfied by that kind of freedom are somehow better or more worth satisfying than the interests that other opposing kinds of freedoms could satisfy. Neither Nozick nor other libertarians supply such arguments.

Moreover, it is not obvious that Kantian principles can support libertarian views like that of Nozick. Kant holds, as we saw, that the dignity of each person should be respected and that each person's capacity to choose freely should be developed. Because we have these duties to each other, government coercion is legitimate whenever it is needed to ensure that the dignity of citizens is being respected or when it is needed to secure the full development of people's capacity to choose. And this, as Kant argues, means that government may legitimately place limits on the use of property and on the making of contracts and impose market restrictions and compulsory taxes when these are needed to care for the welfare or development of persons "who are not able to support themselves."[64] We have no reason to think that only negative rights exist. People can also have positive rights and Kant's theory supports these as much as it supports negative rights.

3.3 Justice and Fairness

On Friday, December 9, 1977, a Senate subcommittee heard the testimony of several workers who had contracted "brown lung" disease by breathing cotton dust while working cotton mills in the south.[65] Brown lung is a chronic disabling respiratory disease with symptoms similar to asthma and emphysema and is a cause of premature death. The disabled workers were seeking a federal law that would facilitate the process of getting disability compensation from the cotton mills, similar to federal laws covering "black lung" disease contracted in coal mines.

Senator Strom Thurmond:

A number of people have talked to me about this and they feel that if the federal government enters the field of black lung, it should enter the field of brown lung; and if those who have suffered from black lung are to receive federal consideration, then it seems fair that those who have suffered from brown lung receive federal consideration. . . . if our [state's cotton mill] workers have been injured and have not been properly compensated, then steps should be taken to see that is done. We want to see them treated fairly and squarely and properly, and so we look forward to . . . the testimony here today.

Mrs. Beatrice Norton:

I started in the mill when I was fourteen years old and I had to get out in 1968 . . . I worked in the dust year after year, just like my mother. I got sicker and sicker . . . [In 1968 I] suddenly had no job, no money, and I was sick, too sick to ever work in my life again . . . State legislators have proven in two successive sessions that they are not going to do anything to help the brown lung victims, so now we come to you in Washington and ask for help. We've waited a long time, and many of us have died waiting. I don't want to die of injustice.

Mrs. Vinnie Ellison:

> My husband worked for twenty-one years [in the mill] in Spartanburg, and he worked in the dustiest parts of the mill, the opening room, the cardroom, and cleaning the air-conditioning ducts . . . In the early sixties he started having trouble keeping up his job because of his breathing. In 1963 his bossman told him that he had been a good worker, but wasn't worth a damn anymore, and fired him . . . He had no pension and nothing to live on and we had to go on welfare to live . . . My husband worked long and hard and lost his health and many years of pay because of the dust. It isn't fair that [the mill] threw him away like so much human garbage after he couldn't keep up his job because he was sick from the dust. We are not asking for handouts; we want what is owed to my husband for twenty-five years of hard work.

Disputes among individuals in business are often interlaced with references to "justice" or to "fairness." This is the case, for example, when one person accuses another of "unjustly" discriminating against him or her, or of showing "unjust" favoritism toward someone else, or of not taking up a "fair" share of the burdens involved in some cooperative venture. Resolving disputes like these requires that we compare and weigh the conflicting claims of each of the parties and strike a balance between them. Justice and fairness are essentially comparative. They are concerned with the comparative treatment given to the members of a group when benefits and burdens are distributed, when rules and laws are administered, when members of a group cooperate or compete with each other, and when people are punished for the wrongs they have done or compensated for the wrongs they have suffered. Although the terms "justice" and "fairness" are used almost interchangeably, we tend to reserve the word "justice" for matters that are especially serious, although some authors have held that the concept of fairness is more fundamental.[66]

Standards of justice are generally taken to be more important than utilitarian considerations.[67] If a society is unjust to some of its members, then we normally condemn that society, even if the injustices secure more utilitarian benefits for everyone. If we think that slavery is unjust, for example, then we condemn a society that uses slavery, even if slavery makes that society more productive. Greater benefits for some cannot justify injustices for others. Nonetheless, we also seem to hold that if the social gains are sufficiently large, a certain level of injustice may legitimately be tolerated.[68] In countries with extreme deprivation and poverty, for example, we seem to hold that some degree of equality may be traded off for major economic gains that leave everyone better off.

But standards of justice do not generally override the moral rights of individuals. Part of the reason for this is that, to some extent, justice is based on individual moral rights. The moral right to be treated as a free and equal person, for example, is part of what lies behind the idea that benefits and burdens should be distributed equally.[69] More important, however, is the fact that, as we saw, a moral right identifies interests people have, the

free pursuit of which may not be subordinated to the interests of others except where there are special and exceptionally weighty reasons. This means that, for the most part, the moral rights of some individuals cannot be sacrificed merely in order to secure a somewhat better distribution of benefits for others. Yet correcting extreme injustices may justify restricting some individuals' rights. Property rights, for example, might be legitimately redistributed for the sake of justice. We will discuss trade-offs of this sort more fully after we have a better idea of what justice means.

Issues involving questions of justice and fairness are usually divided into three categories. *Distributive justice,* the first and basic category, is concerned with the fair distribution of society's benefits and burdens. In the 1977 brown lung hearings, for example, Senator Thurmond pointed out that if federal law helped workers afflicted by black lung, then it was only "fair" that it also help workers afflicted by brown lung. *Retributive justice,* the second category, refers to the just imposition of punishments and penalties upon those who do wrong: A "just" penalty is one that in some sense is deserved by the person who does wrong. Retributive justice would be at issue, for example, if we were to ask whether it would be fair to penalize cotton mills for causing brown lung disease among their workers. *Compensatory justice,* the third category, concerns the just way of compensating people for what they lost when they were wronged by others: A just compensation is one that in some sense is proportional to the loss suffered by the person being compensated (such as loss of livelihood). During the brown lung hearings, for example, both Mrs. Norton and Mrs. Ellison claimed that, in justice, they were owed compensation from the cotton mills because of injuries inflicted by the mills.

This section examines each of these three kinds of justice separately. The section begins with a discussion of a basic principle of distributive justice (equals should be treated as equals) and then examines several views on the criteria relevant to determining whether or not two persons are "equal." The section then turns to a brief discussion of retributive justice and ends with a discussion of compensatory justice.

Distributive Justice

Questions of distributive justice arise when different people put forth conflicting claims on society's benefits and burdens and all the claims cannot be satisfied.[70] The central cases are those where there is a scarcity of benefits—such as jobs, food, housing, medical care, income, and wealth—as compared to the numbers and the desires of the people who want these goods. Or (the other side of the coin) there may be too many burdens—unpleasant work, drudgery, substandard housing, health injuries of various sorts—and not enough people willing to shoulder them. If there were enough goods to satisfy everyone's desires and enough people willing to share society's burdens, then conflicts between people would not arise and distributive justice would not be needed.

When people's desires and aversions exceed the adequacy of their resources, they are forced to develop principles for allocating scarce benefits and undesirable burdens in ways that are just and that resolve the conflicts in a fair way. The development of such principles is the concern of distributive justice.

The fundamental principle of distributive justice is that equals should be treated equally and unequals, unequally.[71] More precisely, the fundamental principle of distributive justice may be expressed as follows:

> *Individuals who are similar in all respects relevant to the kind of treatment in question should be given similar benefits and burdens, even if they are dissimilar in other irrelevant respects; and individuals who are dissimilar in a relevant respect ought to be treated dissimilarly, in proportion to their dissimilarity.*

If, for example, Susan and Bill are both doing the same work for me and there are no relevant differences between them or the work they are doing, then in justice I should pay them equal wages. But if Susan is working twice as long as Bill and if length of working time is the relevant basis for determining wages on the sort of work they are doing, then, to be just, I should pay Susan twice as much as Bill. Or, to return to our earlier example, if the federal government rightly helps workers who have suffered from black lung and there are no relevant differences between such workers and workers who have suffered from brown lung, then, as Senator Thurmond said, it is "fair that those who have suffered from brown lung [also] receive federal consideration."

This fundamental principle of distributive justice, however, is purely formal.[72] It is based on the purely logical idea that we must be consistent in the way we treat similar situations. And the principle does not specify the "relevant respects" that may legitimately provide the basis for similarity or dissimilarity of treatment. Is race, for example, relevant when determining who should get what jobs? Most of us would say no, but then what characteristics are relevant when determining what benefits and burdens people should receive? We will turn now to examine different views on the kinds of characteristics that may be relevant when determining who should get what. Each of these views provides a "material" principle of justice—that is, a principle that gives specific content to the fundamental principle of distributive justice.

Justice as Equality: Egalitarianism

Egalitarians hold that there are no relevant differences among people that can justify unequal treatment.[73] According to the egalitarian, all benefits and burdens should be distributed according to the following formula:

> *Every person should be given exactly equal shares of society's benefits and burdens.*

Egalitarians base their view on the proposition that all human beings are equal in some fundamental respect and that, in virtue of this equality, each person has an equal claim to society's goods.[74] And this, according to the egalitarian, implies that goods should be allocated to people in equal portions.

Equality has, of course, appeared to many as an attractive social ideal and inequality, as a defect. "All men are created equal," says our Declaration of Independence, and the ideal of equality has been the driving force behind the emancipation of slaves, the prohibition of indentured servitude, the elimination of racial, sexual, and property requirements on voting and holding public office, and the institution of free public education. Americans have long prided themselves on the lack of overt status consciousness in their social relations.

In spite of their popularity, however, egalitarian views have been subjected to heavy criticisms. One line of attack has focused on the egalitarian claim that all human beings are equal in some fundamental respect.[75] Critics claim that there is *no* quality that all human beings possess in precisely the same degree: Human beings differ in their abilities, intelligence, virtues, needs, desires, and in all their other physical and mental characteristics. If this is so, then human beings are unequal in all respects.

A second set of criticisms argues that the egalitarian ignores some characteristics that should be taken into account in distributing society's goods: need, ability, and effort.[76] If everyone is given exactly the same things, critics point out, then the lazy person will get as much as the industrious one, even though the lazy one does not deserve as much. If everyone is given exactly the same, then the sick person will get only as much as healthy ones, even though the sick person needs more. If everyone is given exactly the same, the handicapped person will have to do as much as talented persons, even though the handicapped person has less ability. And if everyone is given exactly the same, then individuals will have no incentives to exert greater efforts in their work; as a result, society's productivity and efficiency will decline. Since the egalitarian formula ignores all these facts, and since it is clear that they should be taken into account, critics allege, egalitarianism must be mistaken.

Some egalitarians have tried to strengthen their position by distinguishing two different kinds of equality: political equality and economic equality.[77] *Political equality* refers to an equal participation in, and treatment by, the means of controlling and directing the political system. This includes equal rights to participate in the legislative process, equal civil liberties, and equal rights to due process. *Economic equality,* on the other hand, refers to equality of income and wealth and equality of opportunity. The criticisms leveled against equality, according to some egalitarians, apply only to economic equality and not to political equality. Although everyone will concede that differences of need, ability, and effort may justify some inequalities in the distribution of income and wealth, everyone will also agree that political rights and liberties should not be unequally distributed.

Thus, the egalitarian position may be correct with respect to political equality, even if it is mistaken with respect to economic equality.

Other egalitarians have claimed that even economic equality is defensible if it is suitably limited. Thus, they have argued that every person has a right to a minimum standard of living and that income and wealth should be distributed equally until this standard is achieved for everyone.[78] The economic surplus that remains after everyone has achieved the minimum standard of living can then be distributed unequally according to need, effort, etc. A major difficulty that this limited type of economic egalitarianism must face, however, is specifying what it means by "minimum standard of living." Different societies and different cultures have different views as to what constitutes the necessary minimum to live on. A relatively primitive economy will place the minimum at a lower point than a relatively affluent one. Nonetheless, most people would agree that justice requires that affluent societies satisfy at least the basic needs of their members and not let them die of starvation, exposure, or disease.

Justice Based on Contribution: Capitalist Justice

Some writers assume that a society's benefits should be distributed according to what each individual contributes to that society. The more a person contributes to a society's pool of economic goods, for example, the more that person is entitled to take from that pool; the less an individual contributes, the less that individual should get. Quite simply:

> *Benefits should be distributed according to the contribution each individual makes to achieving the aims of his or her group (the firm, society, humanity, etc.).*

The main question raised by this view of distributive justice is how the "contribution" of each individual is to be measured.

One long-lived tradition has held that contributions should be measured in terms of *work effort*. The more effort people put forth in their work, the greater the share of benefits to which they are entitled. This is the assumption behind the "Puritan ethic," which held that every individual had a religious obligation to work hard at his "calling" (the career to which God summons each individual) and that God justly rewards hard work with wealth and success, while He justly punishes laziness with poverty and failure.[79] In the United States this Puritan ethic has evolved into a secularized "work ethic" which places a high value on individual effort and which assumes that, whereas hard work does and should lead to success, loafing is and should be punished.[80]

But there are many problems with using effort as the basis of distribution.[81] First, to reward a person's efforts without any reference to whether the person produces anything worthwhile through these efforts is to reward incompetence and inefficiency. Secondly, if we reward people solely for their efforts and ignore their abilities and relative productivity, then talented and highly productive people will be given little incentive to invest their

talent and productivity in producing goods for society. As a result, society's welfare will decline.

A second important tradition has held that contributions should be measured in terms of *productivity:* The better the quality of a person's contributed product, the more he or she should receive. ("Product" here should be interpreted broadly to include services rendered, capital invested, commodities manufactured, and any type of literary, scientific, or aesthetic works produced.)[82] A major problem with this second proposal is that it ignores people's needs. Handicapped, ill, untrained, and immature persons may be unable to produce anything worthwhile; if people are rewarded on the basis of their productivity, the needs of these disadvantaged groups will not be met. But the main problem with this second proposal is that it is difficult to place any objective measure on the value of a person's product, especially in fields like the sciences, the arts, entertainment, athletics, education, theology, and health care. And who would want to have their products priced on the basis of someone else's subjective estimates?

In order to deal with the last difficulty above, some authors have assumed that the value of a person's product should he determined by the market forces of supply and demand.[83] The value of a product would then depend not on its intrinsic value but upon the extent to which it is both relatively scarce and is viewed by consumers as desirable. Unfortunately, this method of measuring the value of a person's product still ignores people's needs. Moreover, to many people market prices are an unjust method of evaluating the value of a person's product precisely because markets ignore the intrinsic values of things. Markets, for example, reward entertainers more than doctors. Also, markets often reward a person who through pure chance has ended up with something (an inheritance, for example) that is scarce and that people happen to want. This, to many, seems the height of injustice.

Justice Based on Needs and Abilities: Socialism

Since there are probably as many kinds of socialism as there are socialists, it is somewhat inaccurate to speak of "the" socialist position on distributive justice. Nonetheless, the dictum proposed first by Louis Blanc (1811–1882) and then by Karl Marx (1818–1883) and Nikolai Lenin (1870–1924) is traditionally taken to represent the "socialist" view on distribution: "From each according to his ability, to each according to his needs."[84] The socialist principle, then, can be paraphrased as follows:

> *Work burdens should be distributed according to people's abilities, and benefits should be distributed according to people's needs.*

This "socialist" principle is based first on the idea that people realize their human potential by exercising their abilities in productive work.[85] Since the realization of one's full potentiality is a value, work should be distributed in such a way that a person can be as productive as possible, and this implies distributing work according to ability. Second, the benefits

produced through work should be used to promote human happiness and well-being. And this means distributing them so that people's basic biological and health needs are met, and then using what is left over to meet people's other nonbasic needs. But perhaps most fundamental to the socialist view is the notion that societies should be communities in which benefits and burdens are distributed on the model of a family. Just as able family members willingly support the family, and just as needy family members are willingly supported by the family, so also the able members of a society should contribute their abilities to society by taking up its burdens while the needy should be allowed to share in its benefits.

There is something to be said for the socialist principle: Needs and abilities certainly should be taken into account when determining how society's benefits and burdens should be distributed. Most people would agree, for example, that we should make a greater contribution to the lives of cotton mill workers with brown lung disease who have greater needs than to the lives of healthy persons who have all they need. Most people would also agree that individuals should be employed in occupations for which they are fitted and that this means matching each person's abilities to his or her job as far as possible. Vocational tests in high school and college, for example, are supposed to help students find careers that match their abilities.

However, the socialist principle has also had its critics. First, opponents have pointed out that under the socialist principle there would be no relation between the amount of effort a worker puts forth and the amount of remuneration she receives (since remuneration depends on need, not on effort). Consequently, opponents conclude, workers would not be motivated to put forth any work efforts at all, knowing that they will receive the same whether they work hard or not. The result will be a stagnating economy with a declining productivity.[86] Underlying this criticism is a deeper objection, namely that it is unrealistic to think that entire societies could be modeled on familial relationships. Human nature is essentially self-interested and competitive, the critics of socialism hold; and so, outside the family, people cannot be motivated by the fraternal willingness to share and help that is characteristic of families. Socialists have usually replied to this charge by arguing that human beings are taught to be self-interested and competitive by modern social and economic institutions that inculcate and encourage competitive and self-interested behavior, but that they are not that way by nature. By nature, humans are born into families where they instinctively value helping each other. If these instinctive and "natural" attitudes continued to be nurtured instead of being eradicated, humans would continue to value helping others even outside the family. The debate on what kinds of motivations human nature is subject to is still largely unsettled.

A second objection that opponents of the socialist principle have urged is that if the socialist principle were enforced, it would obliterate individual freedom.[87] Under the socialist principle, the occupation each person entered

would be determined by the person's abilities and not by his or her free choice, If a person has the ability to be a university teacher but wants to be a ditch-digger, the person will have to become a teacher. Similarly, under the socialist principle, the goods a person gets will be determined by the person's needs and not by his or her free choice. If a person needs a loaf of bread but wants a bottle of beer, he or she will have to take the loaf of bread. The sacrifice of freedom is even greater, the critics claim, when one considers that in a socialist society some central government agency has to decide what tasks should be matched to each person's abilities and what goods should be allotted to each person's needs. The decisions of this central agency will then have to be imposed on other persons at the expense of their freedom to choose for themselves. The socialist principle substitutes paternalism for freedom.

Justice as Freedom: Libertarianism

The last section discussed libertarian views on moral rights; libertarians also have some clear and related views on the nature of justice. The libertarian holds that no particular way of distributing goods can be said to be just or unjust apart from the free choices individuals make. Any distribution of benefits and burdens is just if it is the result of individuals freely choosing to exchange with each other the goods each person already owns. Robert Nozick, a leading libertarian, suggests this principle as the basic principle of distributive justice:

> *From each according to what he chooses to do, to each according to what he makes for himself (perhaps with the contracted aid of others) and what others choose to do for him and choose to give him of what they've been given previously (under this maxim) and haven't yet expended or transferred.*[88]

Or, quite simply, "From each as they choose, to each as they are chosen." For example, if I choose to write a novel or choose to carve a statue out of a piece of driftwood, then I should be allowed to keep the novel or the statue if I choose to keep it. Or, if I choose, I should be allowed to give them away to someone else or to exchange them for other objects with whomever I choose. In general, people should be allowed to keep everything they make and everything they are freely given. Obviously, this means it would be wrong to tax one person (that is, take the person's money) in order to provide welfare benefits for someone else's needs.

Nozick's principle is based on the claim (which we have already discussed) that every person has a right to freedom from coercion that takes priority over all other rights and values. The only distribution that is just, according to Nozick, is one that results from free individual choices. Any distribution that results from an attempt to impose a certain pattern on society (for instance, imposing equality on everyone or taking from the have's and giving to the have-not's) will therefore be unjust.

We have already noted some of the problems associated with the libertarian position. The major difficulty is that the libertarian enshrines a certain value—freedom from the coercion of others—and sacrifices all other rights and values to it, without giving any persuasive reasons why this should be done. Opponents of the libertarian view argue that other forms of freedom must also be secured, such as freedom from ignorance and freedom from hunger. These other forms of freedom in many cases override freedom from coercion. If a man is starving, for example, his right to be free from the constraints imposed by hunger is more important than the right of a satisfied man to be free of the constraint of being forced to share his surplus food. In order to secure these more important rights, society may impose a certain pattern of distribution, even if this means that in some cases some people will have to be coerced into conforming to the distribution. Those with surplus money, for example, may have to be taxed to provide for those who are starving.

A second related criticism of libertarianism claims that the libertarian principle of distributive justice will generate unjust treatment of the disadvantaged.[89] Under the libertarian principle, a person's share of goods will depend wholly on what the person can produce through his or her own efforts or what others choose to give the person out of charity (or some other motive). But both of these sources may be unavailable to a person through no fault of the person. A person may be ill, handicapped, unable to obtain the tools or land needed to produce goods, too old or too young to work, or otherwise incapable of producing anything through his or her own efforts. And other people (perhaps out of greed) may refuse to provide that person with what he or she needs. According to the libertarian principle, such a person should get nothing. But this, say the critics of libertarianism, is surely mistaken. If people through no fault of their own happen to be unable to care for themselves, their survival should not depend on the outside chance that others will provide them with what they need. Each person's life is of value and consequently each person should be cared for, even if this means coercing others into distributing some of their surplus to the person.

Justice as Fairness: Rawls

The discussions above have suggested several different considerations that should be taken into account in the distribution of society's benefits and burdens: political and economic equality, a minimum standard of living, needs, ability, effort, and freedom. What is needed, however, is a comprehensive theory capable of drawing these considerations together and fitting them together into a logical whole. John Rawls provides one approach to distributive justice that at least approximates this ideal of a comprehensive theory.[90]

John Rawls's theory is based on the assumption that conflicts involving justice should be settled by first devising a fair method for choosing the principles by which the conflicts will be resolved. Once a fair method of

choosing principles is devised, the principles we choose by using that method should serve us as our own principles of distributive justice.

Rawls proposes two basic principles that, he argues, we would select if we were to use a fair method of choosing principles to resolve our social conflicts.[91] The principles of distributive justice that Rawls proposes can be paraphrased by saying that the distribution of benefits and burdens in a society is just if and only if:

1. *each person has an equal right to the most extensive basic liberties compatible with similar liberties for all, and*
2. *social and economic inequalities are arranged so that they are both*
   a. to the greatest benefit of the least advantaged persons, and
   b. attached to offices and positions open to all under conditions of fair equality of opportunity.

Rawls tells us that principle 1 is supposed to take priority over principle 2 should the two of them ever come into conflict. And within principle 2, part b is supposed to take priority over part a.

Principle 1 is called the "principle of equal liberty." Essentially it says that each citizen's liberties must be protected from invasion by others and must be equal to those of others. These basic liberties include the right to vote, freedom of speech and conscience and the other civil liberties, freedom to hold personal property, and freedom from arbitrary arrest.[92] If the principle of equal liberty is correct, then it implies that it is unjust for business institutions to invade the privacy of employees, to pressure managers to vote in certain ways, to exert undue influence on political processes by the use of bribes, or to otherwise violate the equal political liberties of society's members. According to Rawls, moreover, since our freedom to make contracts would diminish if we were afraid of being defrauded or were afraid that contracts would not be honored, the principle of equal liberty also prohibits the use of force, fraud, or deception in contractual transactions and requires that just contracts should be honored.[93] If this is true, then contractual transactions with customers (including advertising) ought morally to be free of fraud, and employees have a moral obligation to render the services they have justly contracted to their employer.

Part a of principle 2 is the "difference principle." It assumes that a productive society will incorporate inequalities, but it then asserts that steps must be taken to improve the position of the most needy members of society, such as the sick and the disabled unless such improvements would so burden society that they make everyone, including the needy, worse off than before.[94] Rawls claims that the more productive a society is, the more benefits it will be able to provide for its least advantaged members. Since the difference principle obliges us to maximize benefits for the least advantaged, this means that business institutions should be as efficient in their use of resources as possible. If we assume that a market system like ours is most efficient when it is most competitive, then the difference principle will

in effect imply that markets should be competitive and that anticompetitive practices like price-fixing and monopolies are unjust. In addition, since pollution and other environmentally damaging "external effects" consume resources inefficiently, the difference principle also implies that it is wrong for firms to pollute.

Part b of principle 2 is the "principle of fair equality of opportunity." It says that everyone should be given an equal opportunity to qualify for the more privileged positions in society's institutions.[95] This means not only that job qualifications should be related to the requirements of the job (thereby prohibiting racial and sexual discrimination), but that each person must have access to the training and education needed to qualify for the desirable jobs. A person's efforts, abilities and contribution would then determine his or her remuneration.

The principles that Rawls proposes are quite comprehensive and bring together the main considerations stressed by the other approaches to justice that we have examined. But Rawls not only provides us with a set of principles of justice, he also proposes a general method for evaluating in a fair way the adequacy of any moral principles. The method he proposes consists of determining what principles a group of rational self-interested persons would choose to live by if they knew they would live in a society governed by those principles but they did not yet know what each of them would turn out to be like in that society.[96] We might ask, for example, whether such a group of rational self-interested persons would choose to live in a society governed by a principle that discriminates against blacks when none of them knows whether he himself or she herself will turn out to be a black person in that society. The answer, clearly, is that such a racist principle would be rejected and consequently, according to Rawls, the racist principle would be unjust. Thus, Rawls claims that a principle is a morally justified principle of justice if and only if the principle would be acceptable to a group of rational self-interested persons who know they will live in a society governed by the principles they accept but who do not yet know what sex, race, abilities, religion, interests, social position, income, or other particular characteristics each of them will possess in that future society.

Rawls refers to the situation of such an imaginary group of rational persons as the "original position," and he refers to their ignorance of any particulars about themselves as the "veil of ignorance."[97] The purpose and effect of decreeing that the parties to the original position do not know what particular characteristics each of them will possess is to ensure that none of them can protect his or her own special interests. Because they are ignorant of their particular qualities, the parties to the original position are forced to be fair and impartial and to show no favoritism toward any special group: They must look after the good of all.

According to Rawls, the principles that the imaginary parties to the original position accept will *ipso facto* turn out to be morally justified.[98] They win be morally justified because the original position incorporates the Kantian moral ideas of reversibility (the parties choose principles that will

apply to themselves), of universalizability (the principles must apply equally to everyone), and of treating people as ends (each party has an equal say in the choice of principles). The principles are further justified, according to Rawls, because they are consistent with our deepest considered intuitions about justice. The principles chosen by the parties to the original position match most of the moral convictions we already have and where they do not, according to Rawls, we would be willing to change them to fit Rawls's principles once we reflect on his arguments.

Rawls goes on to claim that the parties to the original position would in fact choose his (Rawls's) principles of justice, that is, the principle of equal liberty, the difference principle, and the principle of fair equality of opportunity.[99] The principle of equal liberty would be chosen because the parties will want to be free to pursue their major special interests whatever these might be. Since in the original position each person is ignorant of what special interests he or she will have, everyone will want to secure a maximum amount of freedom so that he or she can pursue whatever interests he or she has upon entering society. The difference principle will be chosen because all parties will want to protect themselves against the possibility of ending up in the worst position in society. By adopting the difference principle, the parties will ensure that even the position of the most needy is cared for. And the principle of fair equality of opportunity will be chosen according to Rawls, because all parties to the original position will want to protect their interests should they turn out to be among the talented. The principle of fair equality of opportunity ensures that everyone has an equal opportunity to advance through the use of his or her own abilities, efforts, and contributions.

If Rawls is correct in claiming that the principles chosen by the parties to the original position are morally justified, and if he is correct in arguing that his own principles would be chosen by the parties to the original position, then it follows that his principles are in fact morally justified to serve as our own principles of justice. These principles would then constitute the proper principles of distributive justice.

Critics, however, have objected to various parts of Rawls's theory.[100] Some have argued that the original position is not an adequate method for choosing moral principles. According to these critics, the mere fact that a set of principles is chosen by the hypothetical parties to the original position tells us nothing about whether the principles are morally justified. Other critics have argued that the parties to the original position would not choose Rawls's principles at all. Utilitarians, for example, have argued that the hypothetical parties to the original position would choose utilitarianism and not Rawls's principles. Still other critics have claimed that Rawls's principles are themselves mistaken. Rawls's principles, according to these critics, are opposed to our basic convictions concerning what justice is.

In spite of the many objections that have been raised against Rawls's theory, his defenders still claim that the advantages of the theory outweigh its defects. For one thing, they claim, the theory preserves the basic values

that have become embedded in our moral beliefs: freedom, equality of opportunity, and a concern for the disadvantaged. Secondly, the theory fits easily into the basic economic institutions of Western societies: It does not reject the market system, work incentives, nor the inequalities consequent on a division of labor. Instead, by requiring that inequalities work for the benefit of the least advantaged and by requiring equality of opportunity, the theory shows how the inequalities that attend the division of labor and free markets can be compensated for and thereby made just. Thirdly, the theory incorporates both the communitarian and the individualistic strains that are intertwined in Western culture. The difference principle encourages the more talented to use their skills in ways that will rebound to the benefit of fellow citizens who are less well off, thereby encouraging a type of communitarian or "fraternal" concern.[101] Yet the principle of equal liberty leaves the individual free to pursue whatever special interests the individual may have. Fourthly, Rawls's theory takes into account the criteria of need, ability, effort, and contribution. The difference principle distributes benefits in accordance with need, while the principle of fair equality of opportunity in effect distributes benefits and burdens according to ability and contribution.[102] And fifthly, the defenders of Rawls argue, there is the moral justification that the original position provides. The original position is defined so that its parties choose impartial principles that take into account the equal interests of everyone, and this, they claim, is the essence of morality.

Retributive Justice

Retributive justice concerns the justice of blaming or punishing persons for doing wrong. Philosophers have long debated the justification of blame and punishment, but we need not enter these debates here. More relevant to our purposes is the question of the conditions under which it is just to punish a person for doing wrong.

The first chapter discussed two major conditions under which a person could not be held morally responsible for what he or she did: ignorance and inability. These two conditions are also relevant to determining the justice of punishing or blaming someone for doing wrong: If people do not know or freely choose what they are doing, then they cannot justly be punished or blamed for it. For example, if the cotton mill owners mentioned at the beginning of this section did not know that the conditions in their mills would cause brown lung disease, then it would be unjust to punish them when it turns out that their mills caused this disease.

A second condition of just punishments is certitude that the person being punished actually did wrong. Many firms, for example, use more or less complex systems of "due process" that are intended to ascertain whether the conduct of employees was really such as to merit dismissal or some other penalty.[103] Penalizing an employee on the basis of flimsy or incomplete evidence is rightly considered an injustice.

Third, just punishments must be consistent and proportioned to the wrong. Punishment is consistent only when everyone is given the same

penalty for the same infraction; punishment is proportioned to the wrong when the penalty is no greater in magnitude than the harm that the wrongdoer inflicted.[104] It is unjust, for example, for a manager to impose harsh penalties for minor infractions of rules, or to be lenient toward favorites but harsh toward all others. If the purpose of a punishment is to deter others from committing the same wrong or to prevent the wrongdoer from repeating the wrong, then punishment should not be greater than what is consistently necessary to achieve these aims.

Compensatory Justice

Compensatory justice concerns the justice of restoring to a person what the person lost when he or she was wronged by someone else. We generally hold that when one person wrongfully harms the interests of another person, the wrongdoer has a moral duty to provide some form of restitution to the person he or she wronged. If, for example, I destroy someone's property or injure him bodily, I will be held morally responsible for paying him damages.

There are no hard and fast rules for determining how much compensation a wrongdoer owes the victim. Justice seems to require that the wrongdoer as far as possible should restore whatever he or she took and this would usually mean that the amount of restitution should be equal to the loss the wrongdoer knowingly inflicted on the victim. Yet some losses are impossible to measure. If I maliciously injure someone's reputation, for example, how much restitution should I make? Some losses, moreover, cannot be restored at all: For can the loss of life or the loss of sight be compensated? In cases of this sort, where the injury is such that full restoration of the loss is not possible, we seem to hold that the wrongdoer should at least pay for the material damages the loss inflicts upon the injured person and his or her immediate family.

Traditional moralists have argued that a person has a moral obligation to compensate an injured party only if three conditions are present:[105]

1. *The action that inflicted the injury was wrong or negligent. For example, if by efficiently managing my firm I undersell my competitor and run her out of business, I am not morally bound to compensate her since such competition is neither wrongful nor negligent; but if I steal from my employer, then I owe him compensation, or if I fail to exercise due care in my driving, then I owe compensation to those whom I injure.*

2. *The person's action was the real cause of the injury. For example, if a banker loans a person money and the borrower then uses it to cheat others, the banker is not morally obligated to compensate the victims; but if the banker defrauds a customer, the customer must be compensated.*

3. *The person inflicted the injury voluntarily. For example, if I injure someone's property accidentally and without negligence, I am not morally obligated to compensate the person. (I may, however, be legally bound to do so depending on how the law chooses to distribute the social costs of injury.)*

The most controversial forms of compensation undoubtedly are the "preferential treatment" programs that attempt to remedy past injustices against groups. If a racial group, for example, has been unjustly discriminated against for an extended period of time in the past and its members consequently now hold the lowest economic and social positions in society, does justice require that members of that group be compensated by being given special preference in hiring, training, and promotion procedures? Or would such special treatment itself be a violation of justice by violating the principle of equal treatment? Does justice legitimize quotas even if this requires turning down more highly qualified nonminorities? These are complex and involved questions that we will not be able to answer at this point. We will return to them in a later chapter.

3.4 Summary: Utility, Rights, and Justice

The last three sections have described the three main kinds of moral standards that today lie at the basis of most of our moral judgments and that force us to bring distinctive kinds of considerations into our moral reasonings. Utilitarian standards must be used when we do not have the resources for attaining everyone's objectives, so we are forced to consider the net social benefits and social costs consequent on the actions (or policies or institutions) by which we can attain these objectives. When these utilitarian considerations are employed, the person must bring into his or her moral reasoning measurements, estimates, and comparisons of the relevant benefits and costs. Such measurements, estimates, and comparisons constitute the information on which the utilitarian moral judgment is based.

Our moral judgments are also partially based on standards that specify how individuals must be treated or respected. These sorts of standards must be employed when our actions and policies will substantially affect the welfare and freedom of specifiable individuals. Moral reasoning of this type forces consideration of whether the behavior respects the basic rights of the individuals involved and whether the behavior is consistent with one's agreements and special duties. These sorts of considerations require information concerning how the behavior affects the basic needs of the humans involved, the freedom they have to choose, the information available to

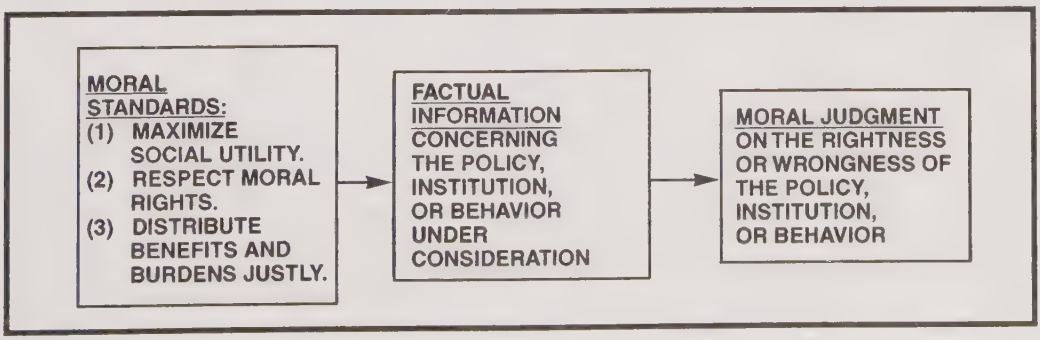


Figure 1

them, the extent to which force, coercion, manipulation, or deception are used upon them, and the tacit and explicit understandings with which they entered various roles and agreements.

And third, our moral judgments are also in part based on standards of justice that indicate how benefits and burdens should be distributed among the members of a group. These sorts of standards must be employed when evaluating actions whose distributive effects differ in important ways. The moral reasoning on which such judgments are based will incorporate considerations concerning whether the behavior distributes benefits and burdens equally or in accordance with the needs, abilities, contributions, and free choices of people as well as with the extent of their wrongdoing. These sorts of considerations in turn rely on comparisons of the benefits and burdens going to different groups (or individuals) and comparisons of their relative needs, efforts, etc.

Our morality therefore contains three main kinds of moral considerations, each of which emphasizes certain morally important aspects of our behavior, but no one of which captures all the factors that must be taken into account in making moral judgments. Utilitarian standards consider only the aggregate social welfare but ignore the individual and how that welfare is distributed. Moral rights consider the individual but discount both aggregate well-being and distributive considerations. Standards of justice consider distributive issues but they ignore aggregate social welfare and the individual as such. These three kinds of moral considerations do not seem to be reducible to each other yet all three seem to be necessary parts of our morality. That is, there are some moral problems for which utilitarian considerations are decisive, while for other problems the decisive considerations are either the rights of individuals or the justice of the distributions involved. This suggests that moral reasoning should incorporate all three kinds of moral considerations, even though only one or the other may turn out to be relevant or decisive in a particular situation. One simple strategy for ensuring that all three kinds of considerations are incorporated into one's moral reasoning is to inquire systematically into the utility, rights, and justice involved in a given moral judgment as in Figure 1. One might, for example, ask a series of questions about an action that one is considering: (1) Does the action, as far as possible, maximize social benefits and minimize social injuries? (2) Is the action consistent with the moral rights of those whom it will affect? (3) Will the action lead to a just distribution of benefits and burdens?

Bringing together different moral standards in this way, however, requires that one keep in mind how they relate to each other. As we have seen, moral rights identify areas in which other people generally may not interfere even if they can show that they would derive greater benefits from such interference. Generally speaking, therefore, standards concerned with moral rights have greater weight than either utilitarian standards or standards of justice. And standards of justice are generally accorded greater weight than utilitarian considerations.

But these relationships hold only in general. If a certain action (or policy or institution) promises to generate sufficiently large social benefits or to prevent sufficiently large social harm, the enormity of these utilitarian consequences may justify limited infringements of the rights of some individuals. Moreover, sufficiently large social costs and benefits may also be significant enough to justify some departures from standards of justice; and the correction of large and widespread injustices may be important enough to justify limited infringements on some individual rights.

We have at this time no comprehensive moral theory capable of determining precisely when utilitarian considerations become "sufficiently large" to outweigh narrow infringements on a conflicting right or standard of justice, or when considerations of justice become "important enough" to outweigh infringements on conflicting rights. Moral philosophers have been unable to agree on any absolute rules for making such judgments. There are, however, a number of rough criteria that can guide us in these matters. Suppose, for example, that only by invading my employee's right to privacy (with hidden cameras and legal on-the-job phone taps) will I be able to stop the continuing theft of several life-saving drugs that some of them are clearly stealing. How can I determine whether the utilitarian benefits are here "sufficiently large" to justify infringing on their right? First, I might ask whether the *kinds* of utilitarian values involved are clearly more important than the *kinds* of values protected by the right (or distributed by the standard of justice). The utilitarian benefits in the present example, for instance, include the saving of human life, while the right to privacy protects (let us suppose) the values of freedom from shame and blackmail and of freedom to live one's life as one chooses. Considering this I might decide that human life is here clearly the more important kind of value. Second, I might then ask whether the more important kind of value also involves substantially more people. For example, since the recovered drugs will (we assume) save several hundred lives, while the invasion of privacy will affect only a dozen people, the utilitarian values do involve substantially more people. Third, I can ask whether the actual injuries sustained by the persons whose rights are violated (or to whom an injustice is done) will be minor.

For example, suppose that I can ensure that my employees suffer no shame, blackmail, or restriction on their freedom as a result of my uncovering information about their private lives (I intend to destroy all such information). Then it would appear that they will not be injured in any major way by my invasion of their privacy.

There are, then, rough criteria that can guide our thinking when it appears that in a certain situation utilitarian considerations might be sufficiently important to override conflicting rights or standards of justice; and similar criteria can be used to determine whether in a certain situation considerations of justice should override an individual's rights. But these criteria remain rough and intuitive. They lie at the edges of the light that ethics can shed on moral reasoning.

Notes

1. U.S. Congress, Senate, *Hearings Before the Committee on Commerce on Corporate Rights and Responsibilities,* 94th Congress, 2nd session, June 1976, pp. 1, 4, 6, 9, 11, 14.

2. Council on Environmental Quality, *Environmental Quality, 1983* (Washington, DC: U.S. Government Printing Office, 1984), pp. 181, 182, 186.

3. Thomas A. Klein, *Social Costs and Benefits of Business* (Englewood Cliffs, NJ: Prentice Hall, 1977).

4. Among the more well known utilitarian moralists are Peter Singer, *Practical Ethics* (London: Cambridge University Press, 1979) and Richard B. Brandt, *A Theory of the Good and the Right* (New York: Oxford University Press, 1979).

5. Jeremy Bentham, *The Principles of Morals and Legislation* (Oxford, 1789); Henry Sidgwick, *Outlines of the History of Ethics,* 5th ed. (London, 1902), traces the history of utilitarian thought to Bentham's predecessors. Some modern expositions of utilitarian thought may be found in Michael D. Bayles, ed., *Contemporary Utilitarianism* (Garden City, NY: Doubleday & Co., Inc., 1968); J. J. C. Smart and Bernard Williams, *Utilitarianism: For and Against* (London: Cambridge University Press, 1973); Amartya Sen and Bernard Williams, eds., *Utilitarianism and Beyond* (New York: Cambridge University Press, 1982); and Harlan B. Miller and William H. Williams, eds., *The Limits of Utilitarianism* (Minneapolis: University of Minnesota Press, 1982).

6. Henry Sidgwick, *Methods of Ethics,* 7th ed. (Chicago: University of Chicago Press, 1962), p. 413.

7. John Stuart Mill, *Utilitarianism* (Indianapolis: The Bobbs-Merrill Co., Inc., 1957), p. 22.

8. Richard Brandt, *Ethical Theory* (Englewood Cliffs, NJ: Prentice Hall, 1959), p. 386; see also Dan W. Brock, "Utilitarianism," in *And Justice for All,* Tom Regan and Donald Van DeVeer, eds. (Totowa, NJ: Rowman and Littlefield, 1982), pp. 217–40.

9. For example, William Stanley Javons, *Theory of Political Economy* (1871); Alfred Marshall, *Principles of Economics* (1890); Cecil Arthur Pigou, *Wealth and Welfare* (1912); for a contemporary defense of utilitarianism in economics, see J. A. Mirrlees, "The Economic Uses of Utilitarianism," in *Utilitarianism and Beyond,* Sen and Williams, eds., pp. 63–84.

10. See Paul Samuleson, *Foundations of Economic Analysis* (Cambridge: Harvard University Press, 1947). A system is "Pareto optimal" if no one in the system can be made better off without making some other person worse off; an "indifference curve" indicates the quantities of one good a person would willingly trade for given quantities of another good.

11. E. J. Mishan, *Economics for Social Decisions: Elements of Cost-Benefit Analysis* (New York: Praeger Publishers, Inc., 1973), pp. 14–17. See also E. J. Mishan, ed., Cost-Benefit Analysis, 3rd. (London: Cambridge University Press, 1982).

12. See, for example, Wesley C. Mitchell, "Bentham's Felicific Calculus," in *The Backward Art of Spending Money and Other Essays* (New York: Augustus M. Kelley, Inc., 1950), pp. 177–202; but see the replies to these measurement objections in Paul Weirch, "Interpersonal Utility in Principles of Social Choice," *Erkenntnis,* 21 (November 1984): 295–318.

13. For a discussion of this problem see Michael D. Bayles, "The Price of Life," *Ethics,* 89, no. 1 (October 1978): 20–34; Jonathan Glover, *Causing Death and Saving Lives* (New York: Penguin Books, 1977); Peter S. Albin, "Economic Values and the

Value of Human Life," in *Human Values and Economic Policy*, Sidney Hook, ed. (New York: New York University Press, 1967).

14. G. E. Moore, *Principia Ethica*, 5th ed. (Cambridge: Cambridge University Press, 1956), p. 149.

15. Alastair MacIntyre, "Utilitarianism and Cost-Benefit Analysis: An Essay on the Relevance of Moral Philosophy to Bureaucratic Theory," in *Values in the Electric Power Industry*, Kenneth Syre, ed. (Notre Dame, IN: University of Notre Dame Press, 1977).

16. David H. Blake, William C. Frederick, and Mildred S. Myers, "Measurement Problems in the Social Audit," in *Ethical Theory and Business*, Tom L. Beauchamp and Norman E. Bowie, eds. (Englewood Cliffs, NJ: Prentice Hall, 1979), pp. 246–52; an excellent review of the literature is contained in Task Force on Corporate Social Performance, *Corporate Social Reporting in the United States and Western Europe* (Washington, DC: U.S. Government Printing Office, 1979), pp. 2–36; see also the more accessible Harold L. John, *Disclosure of Corporate Social Performance: Survey, Evaluation and Prospects* (New York: Praeger Publishers, Inc., 1979).

17. Raymond A. Bauer and Dan H. Fenn, Jr., *The Corporate Social Audit* (New York: Sage Publications, Inc., 1972), pp. 3–14.

18. John J. Corson and George A. Steiner, *Measuring Business's Social Performance: The Corporate Social Audit* (New York: Committee for Economic Development, 1974), p. 41; Thomas C. Taylor, "The Illusions of Social Accounting," *CPA Journal*, 46 (January 1976), 24–28; Manuel A. Tipgos, "A Case against the Social Audit," *Management Accounting* (August 1976), pp. 23–26.

19. Tom L. Beauchamp, "Utilitarianism and Cost-Benefit Analysis: A Reply to MacIntyre," in *Ethical Theory*, Beauchamp and Bowie, eds., pp. 276–82, and Herman B. Leonard and Richard J. Zeckhauser, "Cost-Benefit Analysis Defended," *QQ-Report from the Center for Philosophy and Public Policy*, 3, no. 3 (Summer 1983): 6–9.

20. See Amitai Etzioni and Edward W. Lehman, "Dangers in 'Valid' Social Measurements," *Annals of the American Academy of Political and Social Sciences*, 373 (September 1967): 6; also William K. Frankena, *Ethics*, 2nd ed. (Englewood Cliffs, NJ: Prentice Hall, 1973), pp. 80–83.

21. See Kenneth Arrow, *Social Choice and Individual Values*, 2nd ed. (New York: John Wiley & Sons, Inc., 1951), p. 87; and Norman E. Bowie, *Towards a New Theory of Distributive Justice* (Amherst: The University of Massachusetts Press, 1971), pp. 86–87.

22. See, for example, the techniques enumerated in Mishan, *Economics for Social Decisions*.

23. *Ibid.*, pp. 118–24 and 141–44.

24. E. Bruce Frederickson, "Noneconomic Criteria and the Decision Process," *Decision Sciences*, 2, no. 1 (January 1971): 25–52.

25. Bowie, *Towards a New Theory of Distributive Justice*, pp. 20–22.

26. *Ibid.*, pp. 22–24.

27. S. E. Toulmin, *An Examination of the Place of Reason in Ethics* (Cambridge: Cambridge University Press, 1950), ch. 11; J. Rawls, "Two Concepts of Rules," *Philosophical Review*, 64 (1955): 3–32; J. O. Ormson, "The Interpretation of the Philosophy of J. S. Mill," *Philosophical Quarterly*, 3 (1953): 33–40.

28. See David Lyons, *Forms and Limits of Utilitarianism* (Oxford: Oxford University Press, 1965). Some ethicians hold, however, that act utilitarianism and rule utilitarianism are not really equivalent; see Thomas M. Lennon, "Rules and Relevance: The Act Utilitarianism–Rule Utilitarianism Equivalence Issue," *Idealistic Studies: An International Philosophical Journal*, 14, (May 1984): 148–58.

29. "Guatemala Unions Watch Plant Feud," *New York Times*, 10 July 1984; see also, Robert Morris, "Coca-Cola and Human Rights in Guatemala," *The Corporate Examiner* (November 1980), pp. 3A–3D; Jim Wilson, "Union Fights Coke," *Democratic Left* (March/April 1984).

30. Investor Responsibility Research Center, "Minimum Labor Standards: The Coca-Cola Company, 1979 Analysis Z," 16 April 1979, p. Z–11; see also Investor Responsibility Research Center, "Human Rights Policy: Coca-Cola Co., 1980 Analysis W," 11 April 1980.

31. H. J. McCloskey, "Rights," *The Philosophical Quarterly*, 15 (1965): 115–27; several book-length discussions of rights are available including Alan R. White, *Rights* (Oxford: Clarendon Press, 1984), Samuel Stoljar, *An Analysis of Rights* (New York: St. Martin's Press, 1984), and Henry Shue, *Basic Rights* (Princeton: Princeton University Press, 1981); for a review of the literature on rights see R. Martin and J. W. Nickel, "Recent Work on the Concept of Rights," *American Philosophical Quarterly*, 17, no. 3 (July 1980): 165–80; an outstanding historical account of the evolution of the concept of a right is Richard Tuck, *Natural Rights Theories, Their Origin and Development* (New York: Cambridge University Press, 1979).

32. For a more technical but now widely accepted classification of legal rights see Wesley Hohfeld, *Fundamental Legal Conceptions* (New Haven: Yale University Press, 1919, rpt. 1964), pp. 457–84.

33. There are different ways of characterizing the relation between rights and duties, not all of them equally sound. For example, some authors claim that a person is granted rights only if the person accepts certain duties toward the community which grants those rights. Other authors claim that all my rights can be defined wholly in terms of the duties of others. Both of these claims are probably mistaken, but neither claim is being advanced in this paragraph. The view of this paragraph is that moral rights of the kind identified in the previous paragraph always can be defined *at least in part* in terms of duties others have toward the bearer of the right. To have a moral right of this kind always implies that others have certain moral duties toward me; but it does *not* follow that if others have those duties, then I have the corresponding right. Thus the claim is that the imposition of certain correlative moral duties on others is a necessary but not sufficient condition of one's possession of a moral right.

34. See Richard Wasserstrom, "Rights, Human Rights, and Racial Discrimination," *The Journal of Philosophy*, 61 (29 October 1964): 628–41.

35. *Ibid.*, p. 62.

36. See Ronald Dworkin, "Taking Rights Seriously," in *Taking Rights Seriously*, Ronald Dworkin, ed. (Cambridge: Harvard University Press, 1978), pp. 184–205.

37. Feinberg, *Social Philosophy*, pp. 59–61.

38. *Ibid.*

39. See, for example, Milton Friedman, *Capitalism and Freedom* (Chicago: The University of Chicago Press, 1962), p. 22–36; Friedrich Hayek, *The Road to Serfdom* (Chicago: The University of Chicago Press, 1944), pp. 25–26.

40. Peter Singer, "Rights and the Market," in *Justice and Economic Distribution*, John Arthur and William Shaw, eds. (Englewood Cliffs, NJ: Prentice Hall, 1978), pp. 207–21.

41. H. L. A. Hart, "Are There Any Natural Rights," *Philosophical Review*, 64 (April 1955): 185.

42. J. R. Searle, *Speech Acts* (Cambridge: The University Press, 1969), pp. 57–62.

43. Thomas M. Garrett, *Business Ethics*, 2nd ed. (Englewood Cliffs, NJ: Prentice Hall, 1986), pp. 88–91.

44. *Ibid*, p. 75. See also John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, The Belknap Press, 1971), pp. 342–50.

45. Immanuel Kant, *Groundwork of the Metaphysics of Morals*, H. J. Paton, trans. (New York: Harper & Row, Publishers, Inc., 1964), p. 70.

46. *Ibid.*, p. 91.

47. *Ibid.*, p. 62.

48. *Ibid.*, p. 64–70.

49. *Ibid.*, p. 96.

50. See Fred Feldman, *Introductory Ethics* (Englewood Cliffs, NJ: Prentice Hall, 1978), pp. 119–28; and Rawls, *A Theory of Justice*, pp. 179–80.

51. Kant, *Groundwork*, p. 105.

52. See, for example, A. K. Bierman, *Life and Morals: An Introduction to Ethics* (New York: Harcourt Brace Jovanovich, Inc., 1980), pp. 300–301; Charles Fried, *Right and Wrong* (Cambridge: Harvard University Press, 1978), p. 129; Dworkin, *Taking Rights Seriously*, p. 198; Thomas E. Hill, Jr., "Servility and Self-Respect," *The Monist*, 57, no. 1 (January 1973): 87–104; Feinberg, *Social Philosophy*, p. 93; Gregory Vlastos, "Justice and Equality," p. 48 in *Social Justice*, Richard Brandt, ed. (Englewood Cliffs, NJ: Prentice Hall, 1964), pp. 31–72.

53. For a similar argument based on Kant's first formulation of the categorial imperative see Marcus Singer, *Generalization in Ethics* (New York: Alfred A. Knopf, Inc., 1961), pp. 267–74; for one based on Kant's second formulation see Alan Donagan, *The Theory of Morality* (Chicago: The University of Chicago Press, 1977), p. 85; also see I. Kant, *Metaphysical Elements of Justice* (New York: Bobbs-Merrill Co., Inc., 1965), pp. 91–99.

54. See Alan Gewirth, *Reason and Morality* (Chicago: The University of Chicago Press, 1978), who argues for these rights (p. 256) on the basis of a principle that, although different from Kant's first formulation in some important respects, is nonetheless very much like it: "Every agent must claim that he has rights to freedom and well-being for the reason that he is a prospective purposive agent . . . it follows, by the principle of universalizability, that all prospective purposive agents have rights to freedom and well-being" (p. 133); Donagan, *The Theory of Morality*, pp. 81–90, argues for these on the basis of Kant's second formulation.

55. See Singer, *Generalization in Ethics*, pp. 255–57, for a discussion of how Kant's first formulation provides a basis for the obligation to keep one's promises and for truthfulness in the making of promises; see Donagan, *Theory of Morality* pp. 90–94, for a discussion of the same subject in terms of the second formulation.

56. See Jonathan Harrison, "Kant's Examples of the First Formulation of the Categorical Imperative," in *Kant, A Collection of Critical Essays*, Robert Paul Wolff, ed. (Garden City, NY: Doubleday & Co., Inc., 1967), pp. 228–45; see also in the same work, the reply by J. Kemp and the counterreply by J. Harrison, both of which focus on the meaning of "is willing."

57. Fred Feldman, *Introductory Ethics*, pp. 123–28; Robert Paul Wolff, *The Autonomy of Reason* (New York: Harper Torch Books, 1973), p. 175.

58. For example, J. B. Mabbott, *The State and the Citizen* (London: Arrow, 1958), p. 57–58.

59. Feldman, *Introductory Ethics*, pp. 116–17.

60. For example, Richard M. Hare, *Freedom and Reason* (New York: Oxford University Press, 1965), who uses Kant's first formulation (p. 34), defends himself against the example of the "fanatic" in this way.

61. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, Inc., Publishers, 1974), p. ix.

62. *Ibid.*, pp. 30–31.

63. *Ibid.*, p. 160; see also pp. 160–62.

64. Kant, *The Metaphysical Elements of Justice*, p. 93.

65. U.S. Congress, Senate, *Brown Lung: Hearing Before a Subcommittee of the Committee on Appropriations*, 95th Congress, 1st Session. 9 December 1977, pp. 3, 52, 53, 54, 59, and 60.

66. John Rawls, "Justice as Fairness," *The Philosophical Review*, 67 (1958); 164–94; R. M. Hare, "Justice and Equality," in *Justice and Economic Distribution*, Arthur and Shaw, ed., p. 119.

67. Rawls, *A Theory of Justice*, pp. 3–4.

68. See, for example, Rawls, *A Theory of Justice*, p. 542; and Joel Feinberg, "Rawls and Intuitionism," pp. 114–16 in *Reading Rawls*. Norman Daniels, ed. (New York: Basic Books, Inc., Publishers, n.d.), pp. 108–24; and T. M. Scanlon, "Rawls' Theory of Justice," pp. 185–91 in *ibid.*, pp. 160–205.

69. See, for example, Vlastos, "Justice and Equality."

70. Rawls, *A Theory of Justice*, pp. 126–30.

71. William K. Frankena, "The Concept of Social Justice," in *Social Justice*, Brandt ed., pp. 1–29; C. Perelman, *The Idea of Justice and the Problem of Argument* (New York: Humanities Press, Inc., 1963), p. 16.

72. Feinberg, *Social Philosophy*, pp. 100–102; Perelman, *Idea of Justice*, p. 16.

73. Christopher Ake, "Justice as Equality," *Philosophy and Public Affairs*, 5, no. 1 (Fall 1975): 69–89.

74. Kai Nielsen, "Class and Justice" in *Justice and Economic Distribution*, Arthur and Shaw, eds., pp. 225–45; see also Gregory Vlastos, *Justice and Equality*. Vlastos interprets "equality" in a much different sense than I do here.

75. Bernard Williams, "The Idea of Equality," in *Philosophy and Society*, 2nd series, Laslett and Runciman, ed. (London: Blackwell, 1962), pp. 110–31.

76. Feinberg, *Social Philosophy*, 109–11.

77. See Bowie, *A New Theory of Distributive Justice*, pp. 60–64.

78. See D. D. Raphael, "Equality and Equity," *Philosophy*, 21 (1946): 118–32. See also, Bowie, *A New Theory of Distributive Justice*, pp. 64–65.

79. See Francis X. Sutton, Seymour E. Harris, Carl Kaysen, and James Tobin, *The American Business Creed* (Cambridge: Harvard University Press, 1956), pp. 276–78; the classic source is Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, Talcott Parsons, trans. (London: 1930); see also, Perry Miller, *The New England Mind: From Colony to Province* (Cambridge: Harvard University Press, 1953), pp. 40–52.

80. See A. Whitner Griswold, "Three Puritans on Prosperity," *The New England Quarterly*, 7 (September 1934): 475–88; see also Daniel T. Rodgers, *The Work Ethic in Industrial America* (Chicago: The University of Chicago Press, 1978).

81. John A. Ryan, *Distributive Justice*, 3rd ed. (New York: The Macmillan Co., 1941), pp. 182–83; Nicholas Rescher, *Distributive Justice* (New York: The Bobbs-Merrill Co., Inc., 1966), pp. 77–78.

82. Rescher, *Distributive Justice*, pp. 78–79; Ryan, *Distributive Justice*, pp. 183–85.

83. Rescher, *Distributive Justice*, pp. 80–81; Ryan, *Distributive Justice*, pp. 186–87.

84. Karl Marx, *Critique of the Gotha Program* (London: Lawrence and Wishart, Ltd., 1938), pp. 14 and 107; Louis Blanc, *L'Organization du Travail* (Paris, 1850) cited in D. O. Wagner, *Social Reformers* (New York: The Macmillan Co., 1946), p. 218; Nikolai Lenin, "Marxism on the State," pp. 76–77; on the question whether Marx had a theory of distributive justice, see Ziyad I. Husami, "Marx on Distributive Justice," in *Marx, Justice, and History*, Marshall Cohen, Thomas Nagel, and Thomas Scanlon, eds. (Princeton: Princeton University Press, 1980), pp. 42–79.

85. Marx, *Critique of the Gotha Program;* see also John McMurtry, *The Structure of Marx's World View* (Princeton: Princeton University Press, 1978), ch. I.

86. Bowie, *A New Theory of Distributive Justice*, pp. 92–93. See also Norman Daniels, "Meritocracy," in *Justice and Economic Distribution*, Arthur and Shaw, eds., pp. 167–78.

87. Bowie, *ibid.*, pp. 96–98.

88. Robert Nozick, *Anarchy, State, and Utopia*, p. 160.

89. Rawls, *A Theory of Justice*, pp. 65–75.

90. *Ibid.*, pp. 577–87.

91. *Ibid.*, pp. 298–303.

92. *Ibid.*, p. 61.

93. *Ibid.*, pp. 108–14 and 342–50.

94. *Ibid.*, pp. 75–83 and 274–84.

95. *Ibid.*, pp. 83–90.

96. *Ibid.*, pp. 17–22.

97. *Ibid.*, pp. 136–42.

98. *Ibid.*, pp. 46–53.

99. The core of the argument is at *ibid.*, pp. 175–83, but parts may also be found at pp. 205–9; 325–32; 333–50; 541–48.

100. See the articles collected in *Reading Rawls*, Daniels, ed.; see also Brian Barry, *The Libal Theory of Justice* (Oxford: Clarendon Press, 1973); Robert Paul Wolff, *Understanding Rawls* (Princeton: Princeton University Press, 1977).

101. Rawls, *A Theory of Justice*, pp. 105–8.

102. *Ibid.*, p. 276.

103. On the relation between justice and due process see David Resnick, "Due Process and Procedural Justice," in *Due Process*, J. Roland Pennock and John W. Chapman, eds. (New York: New York University Press, 1977), pp. 302–10; employee due process procedures are discussed in Maurice S. Trotta and Harry R. Gudenberg, "Resolving Personnel Problems in Non-union Plants," in *Individual Rights in the Corporation*, Alan F. Westin and Stephen Salisbury, eds. (New York: Pantheon Books, Inc., 1980), pp. 302–10.

104. On the relation between justice and consistency in the application of rules see Perelman, *The Idea of Justice*, pp. 36–45; proportionality in punishment is discussed in John Kleinig, *Punishment and Desert* (The Hague: Martinus Nijoff, 1973), pp. 110–33; and C. W. K. Mundle, "Punishment and Desert," *Philosophical Quarterly*, IV (1954): 216–18.

105. Henry J. Wirtenberger, S.J., *Morality and Business* (Chicago: Loyola University Press, 1962), pp. 109–19; see also Herbert Jone, *Moral Theology*, Urban Adelman, trans. (Westminster, MD: The Newman Press, 1961), pp. 225–47.

106. Business ethics in the international arena is a topic that is not well developed in the literature on business ethics. The best book on this topic, and one from which my discussion here draws heavily, is that of Thomas Donaldson, *The Ethics of International Business* (New York: Oxford University Press, 1989). See also Raymond Vernon, "Ethics

of Transnationalism," *Society* (March/April 1987), pp. 53–56; W. Michael Hoffman, Ann E. Lange, and David A. Fedo, eds., *Ethics and the Multinational Enterprise* (New York: University Press of America, 1986); Henry Shue, "Transnational Transgressions," in Tom Regan, ed., *Just Business: New Introductory Essays in Business Ethics* (New York: Random House, 1984), pp. 271–91; Richard T. DeGeorge, *Business Ethics*, 3rd ed. (New York: Macmillan Publishing Company, 1990), pp. 399–426; and Lee Preston, "The Evolution of Multinational Public Policy Toward Business: Codes of Conduct," in Lee Preston, ed., *Research in Corporate Social Performance and Policy: Volume 10* (Greenwich, CT: JAI Press, 1988). An older but still useful compendium of the ethical issues multinationals face is Thomas N. Gladwin and Ingo Walter, *Multinationals Under Fire: Lessons in the Management of Conflict* (New York: John Wiley & Sons, 1980). Two classic accounts of multinational issues that reach rather different conclusions are Richard J. Barnet and Ronald E. Muller, *Global Reach: The Power of the Multinational Corporations* (New York: Simon and Schuster, 1974), and Raymond Vernon, *Storm Over the Multinationals: The Real Issues* (Cambridge, MA: Harvard University Press, 1977).

4

Survey of Ethical Aptitudes

Instructions: Each of the following statements can be completed in two ways. Think about each alternative, and circle the one that you think best represents your feelings.

1. Persons' actions should be described in terms of being
   a. good or bad.
   b. right or wrong.

2. When making an ethical decision, one should pay attention to
   a. one's conscience.
   b. others' needs, wants, and desires.

3. Solutions to ethical problems are usually
   a. some shade of gray.
   b. black and white.

4. It is of more value to societies to
   a. follow stable traditions and maintain a distinctive identity.
   b. be responsive and adapt to new conditions as the world changes.

5. When thinking through ethical problems, I prefer to
   a. develop practical, workable alternatives.
   b. make reasonable distinctions and clarifications.

6. When people disagree over ethical matters, I strive for
   a. some point(s) of agreement.
   b. workable compromises.

7. Uttering a falsehood is wrong because
   a. depending on the results, it can lead to further problems.
   b. it wouldn't be right for anyone to lie.

8. Thinking of occupations, I would rather be a
   a. wise judge, applying the law with fairness and impartiality.
   b. benevolent legislator, seeking an improved life for all.

9. I would rather be known as a person who
   a. has accomplished a lot and achieved much.
   b. has integrity and is a person of principle.

10. The aim of science should be
    a. to discover truth.
    b. to solve existing problems.

11. Whether a person is a liar is
    a. a matter of degree.
    b. a question of kind.

12. A nation should pay more attention to
    a. its heritage, its roots.
    b. its future, its potential.

13. It is more important to be
    a. happy.
    b. worthy.

14. Unethical behavior is best described as
    a. violation of a principle of law.
    b. causing some degree of harm.

15. The purpose of government should be
    a. to promote the best possible life for its citizens.
    b. to secure justice and fair treatment.

How to Score this Test

SCORE = Odd A's + even B's - 8

+7 ≥ SCORE ≥ +5: flaming utilitarian
+4 ≥ SCORE ≥ +2: moderate utilitarian
+1 ≥ SCORE ≥ –1: mugwump
–2 ≥ SCORE ≥ –4: moderate formalist
–5 ≥ SCORE ≥ –8: ice-cold formalist

After you have taken the test, compare your score with those of others in the class. Do the similarities or differences in scores account for any intuited features in yourself or others?

5

Challenger: The Path to Disaster

By Mark Maier, Binghamton University—The State University of New York, with the support of grants from the Research Foundation of SUNY and the GTE Corporation. Former Thiokol engineer Roger Boisjoly, former NASA budget analyst Richard Cook, Presidential Commissioner Robert Hotz, former Thiokol SRM Director Allan McDonald, former NASA Program Manager Lawrence Mulloy, and NASA itself assisted in the research for this case. The author thanks John Seeger and the anonymous reviewers of the Case Research Journal *for their collaboration in improving the case.*

Case A

The journey of a thousand miles begins with a single step.
Ancient proverb.

Industrial crises are not discrete events, but the culmination of a series of complex, interactive processes. They have long incubation periods.
Contemporary organization wisdom.

Prologue (Flashback): "Obviously, a Major Malfunction"

January 27th, 1986. Wasatch, Utah (9:30 p.m., MST). Driving home on the snow-swept country roads, Roger Boisjoly (pronounced "Beaujolais") and several of his engineering colleagues from the Solid Rocket Motor Division of Morton Thiokol, Inc. (MTI), were aware of the awkward silence enveloping them. Thiokol was NASA's sole supplier of solid rocket motors (SRMs) for the space shuttle, and the engineers had just participated in a lengthy and heated telephone conference call (telecon) with the Agency, the purpose of which had been to assess the safety of flying Mission 51-L—the *Challenger*—the next morning (see Exhibit 1). Weather forecasters had predicted frigid overnight lows, and NASA, which had never launched a

shuttle below 53°F had wanted to know whether the anticipated launchtime temperature of 29°F posed too great a risk. Top Agency officials directed its Marshall Space Flight Center managers (the NASA center responsible for the rocket boosters) to call the SRM contractor to specifically determine whether the critical rubber O-ring seals between the rocket segments would function at such cold temperatures.

After initially recommending against the launch, Thiokol management—in response to intense pressure from NASA's Marshall managers and over the strenuous objections of its own engineers—subsequently reversed themselves and told NASA the launch could proceed (see Exhibit 2).

In the darkness of the car pool, hardly a word was spoken. Biosjoly—his company's top expert on the shuttle rockets' O-ring seals and the one who had objected the most vigorously to the launch—stared out the window, shaking his head in disbelief: "How could NASA reject our unanimous recommendation not to launch the shuttle—the first time in the entire history of space flight that they had ever challenged a conservative 'unsafe-to-fly' position? More astoundingly, why did our managers call for a half-hour 'break' in the telecon, when we had already voted on the launch and our vote was 'No'? And, during that caucus, why did the managers ignore our concerns—and, worse, *overrule* them—to give NASA the A-OK to launch?"

Lost in the silence, a combination of anger, frustration, and fear swept over Roger Boisjoly as he pondered the turn of events that evening. Just six months earlier, hadn't he warned his superiors of the urgency of correcting the persistent problems on their rocket joint? Hadn't he told them that failure to dedicate a team to solving the problem, with the joint having the number one priority, might—how had he put it in his memo to the vice president of engineering (see Exhibit 3)—"result in a catastrophe of the highest order: Loss of human life"? But virtually from the start, it had become clear to him and his engineering colleagues that the task force that Thiokol had subsequently established was only a paper tiger: Management had refused pleas to invest the group with sufficient clout to effect a serious redesign effort (see Exhibit 4). As his thoughts returned to the present, Boisjoly stared blankly through the falling snow, shook his head again and thought to himself: "This joint has been nothing but trouble for months. I just hope our managers made the right call. I pray this launch doesn't end in catastrophe. Please, God: let it be safe."

January 27th, 1986. Cape Canaveral, Florida (11:30 p.m., EST). Halfway across the country at the Kennedy Space Center in Florida, Allan McDonald, Thiokol's representative for the *Challenger* launch, was still arguing with Larry Mulloy and Stanley Reinartz, the NASA launch officials he had been sitting with for the telecon (refer to Exhibit 1). McDonald tried desperately to dissuade them from taking his company's reversal at face value. As Thiokol's Solid Rocket Motor Director, McDonald knew the boosters were officially "qualified" for flight only at temperatures above 40°. He turned to Mulloy and Reinartz, and—even though he sensed the futility of his effort—told them, "If we're wrong, and something goes wrong on this

flight . . . I wouldn't want to be the person to stand up in front of a board of inquiry and say that I went ahead and told them to go ahead and launch this thing outside of what the motor was qualified to."[1] When Reinartz and Mulloy ignored his ruminations, McDonald left the room to retrieve his company's official launch recommendation, which Reinartz had asked Thiokol to fax to them (see Exhibit 2). *Challenger* had been given the green light to GO.

January 28th, 1986. At 11:38 a.m. the next morning, the Space Shuttle *Challenger* lifted off from Launch Pad 39-B for the twenty-fifth flight of the shuttle program. The air temperature was 36°F. On the right-hand Solid Rocket Booster (SRB), overnight lows of 8°F at the joint between the two bottom-most rocket segments had hardened the rubber O-rings beyond their ability to effect an impenetrable seal, just as the Thiokol engineers had warned the night before. The O-rings were vaporized at ignition. Only a fragile seal, formed by the products of combustion, stopped the resulting leak and kept *Challenger* from blowing up on the pad.

At the viewing room at Morton Thiokol, Inc. (MTI) in Utah, the engineers who had participated in the evening telecon breathed a collective sigh of relief. Boisjoly leaned over to one of his colleagues, Bob Ebeling, and whispered, "We just dodged a bullet."

Just 40 seconds later, *Challenger* was rocked by the largest wind shear ever encountered in flight. The fragile seal shattered and—unbeknownst to flight controllers on the ground—hot gases began streaming out of the joint, like a searing blowtorch directed at the massive external fuel tank. At T+60 seconds, just before pilot Michael Smith was given the signal to "Go at throttle up," Ebeling leaned back toward Boisjoly and confessed that he had "just completed a prayer of thanks to the Lord for a successful launch."

An instant later, the shuttle was ripped to pieces as the fuel tank ruptured. The seven *Challenger* astronauts survived the breakup, but perished when their flight deck slammed into the Atlantic nearly 3 minutes later. [Several of the astronauts' Personal Emergency Air Packs (PEAPs) were later recovered and inspected, revealing that they had been manually activated and partially used.]

The painful, but superfluous, announcement was haltingly broadcast over the NASA intercom: "Flight controllers here looking very carefully at the situation. . . . Obviously, a major malfunction . . . We have no down-link. . . ."

June 10th, 1986. Washington, D.C. In its final report, the Presidential Commission appointed to investigate the cause of the disaster noted that its immediate, technical source was the failure of the rubber O-rings to seal properly due to freezing temperatures which preceded liftoff. And even though the Rogers Commission assailed the decision-making processes of January 27th as "flawed" (referring to those events as "the contributing cause of the accident"), it also stressed that this had been a disaster waiting to happen; an "accident rooted in history." The Commission noted: The Space Shuttle's Solid Rocket Booster problem began with the faulty design

of its joint and increased as both NASA and contractor management first failed to recognize it as a problem, then failed to fix it and finally treated it as an acceptable flight risk.[2] How could it have happened? More importantly, how might it have been prevented?

What if a critical examination of the key events and organizational processes which led up to the *Challenger* disaster were to reveal parallels to the processes and dynamics which characterize everyday life in most of our organizations? Can "launching a *Challenger*" be used as a metaphor for organizational dysfunctions elsewhere? If so, then how might an in-depth analysis of this tragedy provide clues about how to prevent similar "malfunctions" (or, "recurrences") in other organizations? Or, equally important, provide the motivational underpinnings and strength of conviction for others to act on such insights? It is with these questions in mind that we revisit the Space Shuttle *Challenger* Disaster of 1986.

Challenger: An Accident Rooted in History (1972–1985)

Disaster by Design? Although the twin rocket boosters which propel the shuttle into orbit appear to be solid pieces of flight hardware, each is, in fact, assembled from four massive (12 feet in diameter, 25 feet tall), interlocking segments, stacked together at the launch site and subsequently mated to the shuttle and its external fuel tank (see Figures 1 and 2). To keep the explosive gases confined in the booster, the joints between the interlocking segments on each SRB were sealed by not one, but two, slim ¼-inch thick) synthetic rubber O-rings: The second O-ring had been incorporated into the design ostensibly to provide a backup (redundancy, in NASA parlance) in case the so-called primary O-ring seal ever failed (see Figure 3*a*).

Documented concerns with the rocket booster joints dated back to the late 1970s. For example, once in 1977 and then again in 1979, Leon Ray and John Miller, engineers at the Marshall Space Flight Center (the NASA unit responsible for monitoring the development and performance of the shuttle's components), had alerted Marshall's Chief Engineer for Solid Rocket Motors (Glenn Eudy) to the dangers in the Thiokol design. In their 1979 memo (see Exhibit 5), they formally assailed the Thiokol "tang-and-clevis" joint design as "completely unacceptable." Contrary to the contractor's representations, simulated ignition tests had demonstrated that the secondary seal could become completely disengaged from its sealing surface (as illustrated in Figure 3*b*). In other words, there was no reliable backup to count on in case the primary O-ring ever failed.

Thiokol's selection as contractor for the boosters had been clouded in controversy in the first place, particularly since the company had been ranked last among four competitors in engineering design. The chief reason NASA offered for selecting Thiokol despite these reservations had been economic: The reusable feature of its modular segments represented, in the words of NASA's selection report, "a sizable cost advantage."[3] Hoping to cash in on the emerging satellite launching business, NASA in the early

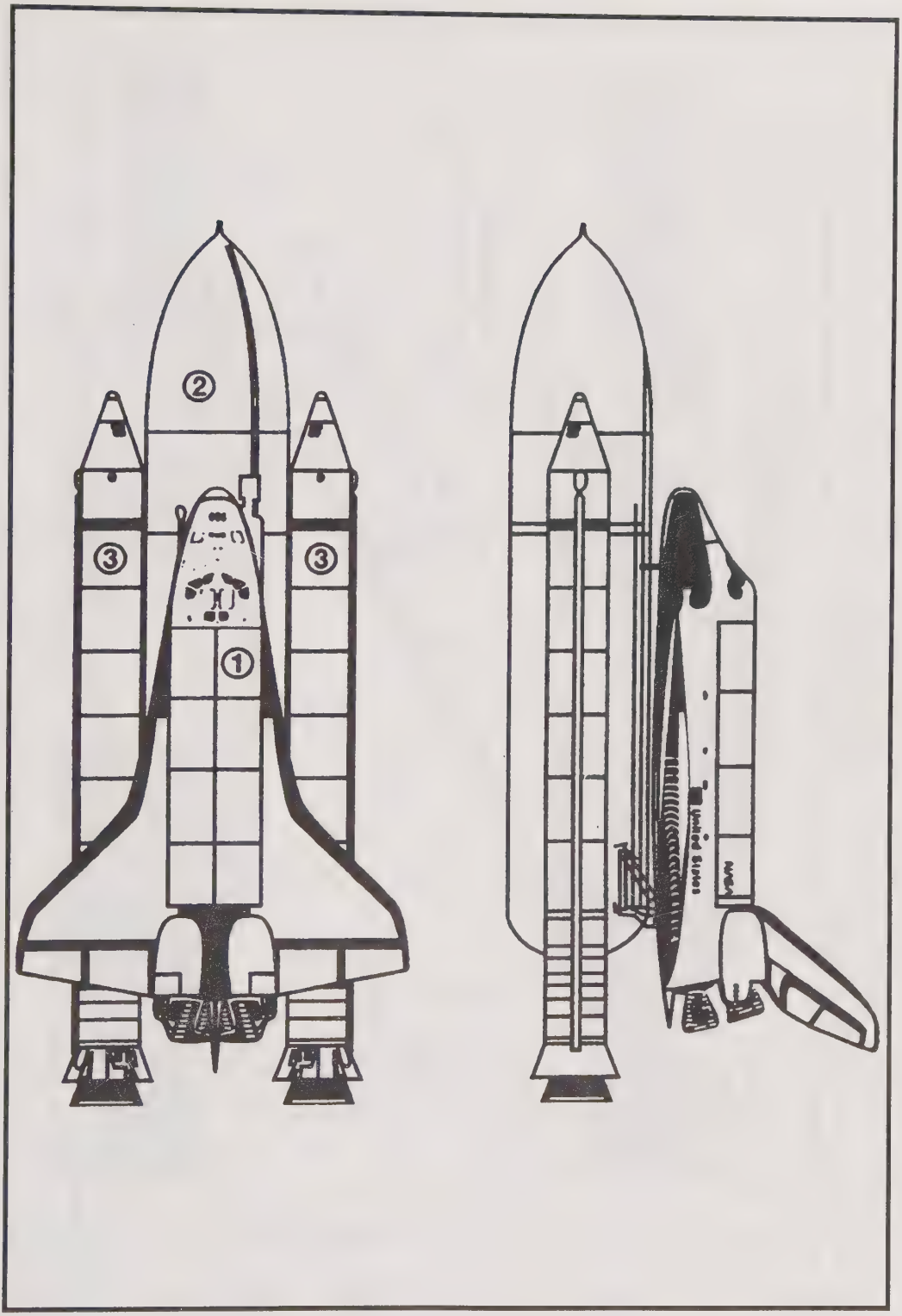


Figure 1
Space shuttle stacked for launch, showing (1) orbiter, (2) external tank, and (3) boosters (*Source: Rogers, 1986: p. 3*)

FIGURE 2
Space shuttle solid rocket motor (indicating component rocket segments and field joints).

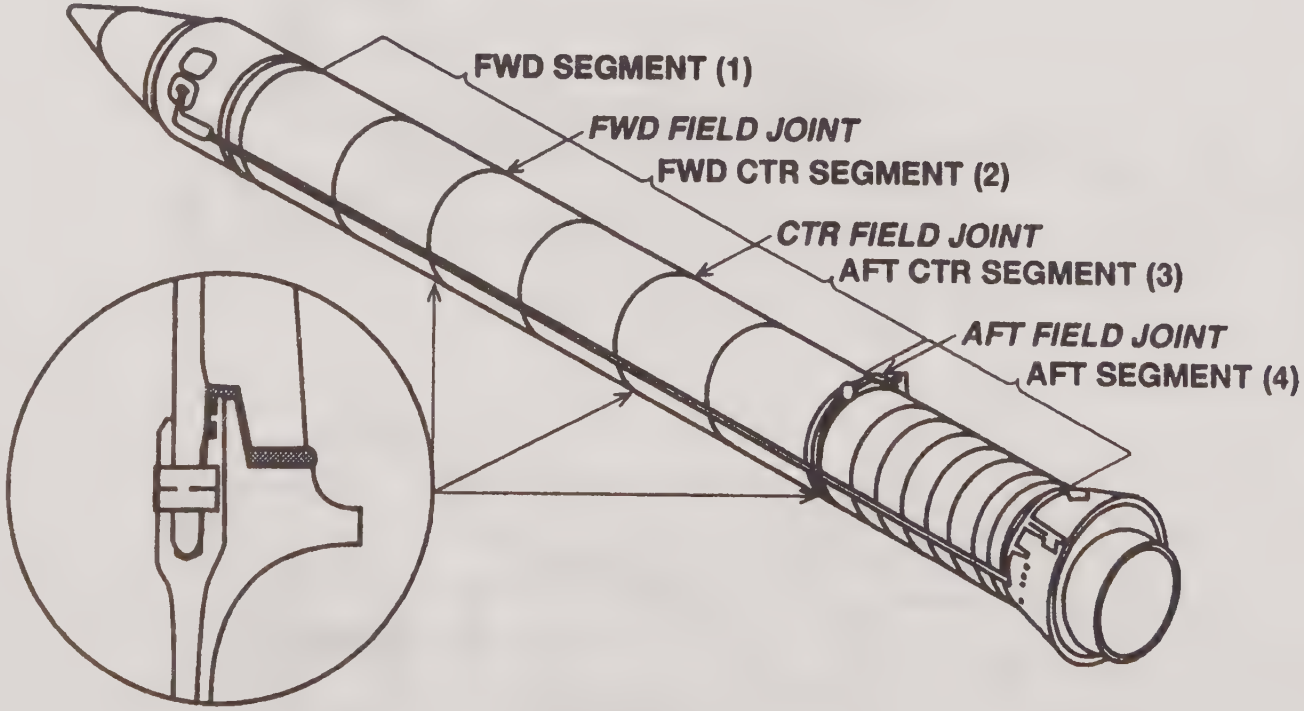


Diagram of Solid Rocket Motor, showing (1) Forward, (2) Forward-Center, (3) Aft-Center, and (4) Aft segments. The aft field joint of the right-hand SRM was the one which failed on *Challenger*. (Inset: Detail of tang-and-clevis field joint.) *(Source: Rogers, 1986, Appendix L-40)*

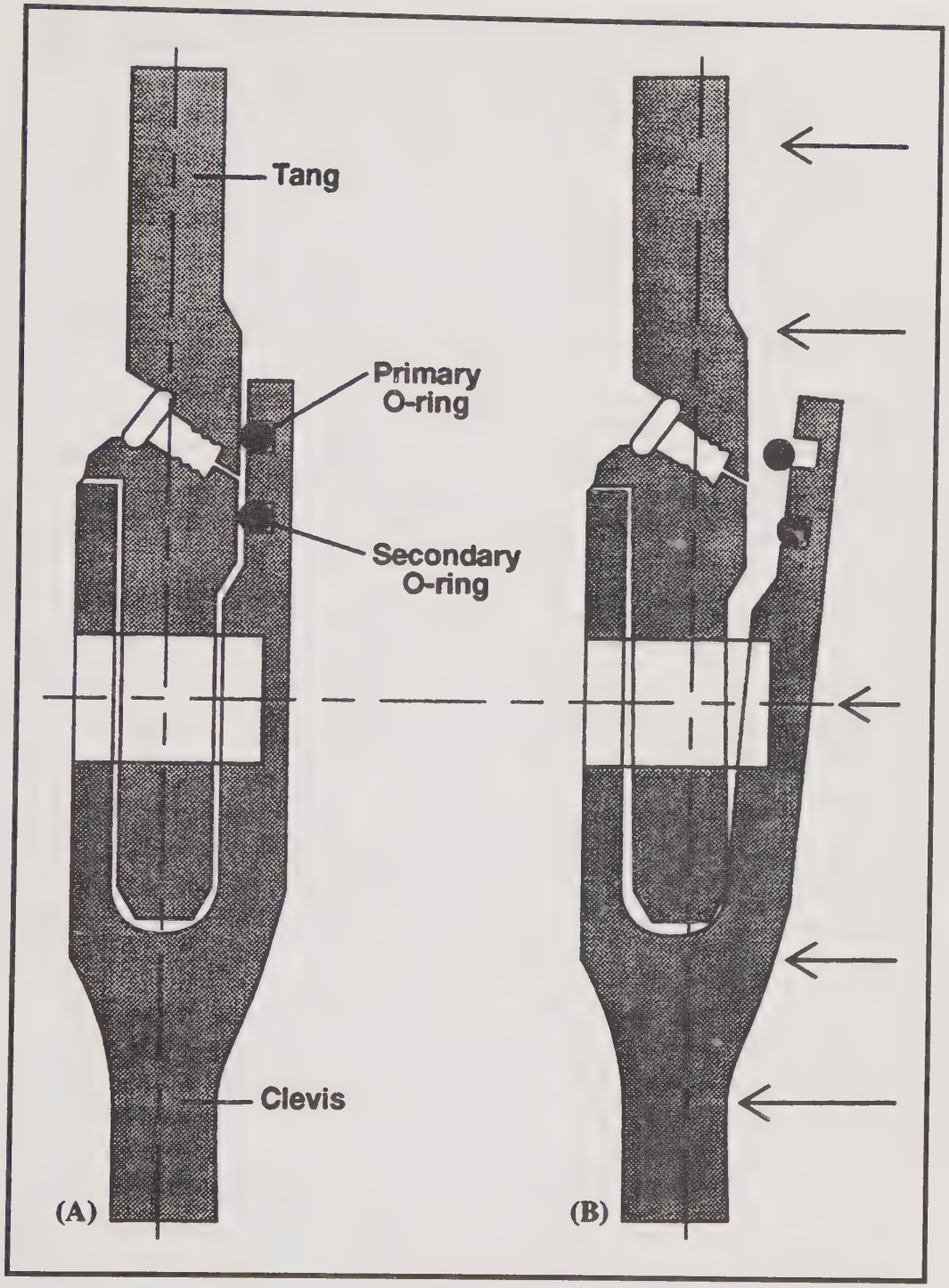


Figure 3
Diagram of SRM "tang-and-clevis" field joint: (A) at rest and (B) pressurized (at ignition). The drawing at the right shows how the tang and clevis deflect away from one another during pressurization to create a gap at the location of the O-rings. (Inside of the booster is to the right in the sketches, atmosphere to the left.) Artwork by Ilil Arbel.
(Reprinted with permission from IEEE Spectrum. © 1987 IEEE, 24 (2), p. 43)

1970s had sold the shuttle (which originally was intended to be just a space ferry for the more ambitious space station project) to then-President Nixon and to Congress as a vehicle "designed to fly up to 60 missions per year."[4] The shuttle would "be launched like a rocket, and land like an airplane,"[4] an inexpensive and ecological alternative to launching satellites on "throw-away rockets."[5]

The shuttle program differed sharply from its glamorous predecessors, Apollo and Gemini. The shift was apparent even in the selection of program nomenclature: "Shuttle" replaced "Mercury," "Gemini," and "Apollo." And, as Marx, Stubbart, Traub & Cavanaugh explained,[6] getting the Space Transportation System (STS) approved represented a "pyrrhic gain" for NASA:

> Most of the original design was bargained away trying to accommodate competing military, commercial, and scientific interests. For instance, to meet Pentagon specifications, the orbiter's payload was increased. . . . Furthermore, a zealous Office of Management and Budget trimmed original cost estimates by half. But perhaps most significantly, NASA bowed to Congressional pressure to transform the shuttle operation into a government version of Federal Express.

Unlike its predecessors, the shuttle was funded largely on its promise to be so reliable and competitive that it would ultimately turn a profit. For it to do so, it would have to fly, and fly often. The conflicting goals and pressures, as well as the overt technological complexity of the system, ensured that STS would never operate with the efficiency its developers dreamed of.[7]

The "space airliner." The early fears of the NASA engineers were confirmed when the shuttle actually began flying in 1981. Although President Ronald Reagan declared the shuttle system to be fully operational after just four test flights—"ready to provide economical and routine access to space for scientific exploration, commercial ventures and for tasks related to the national security—"[8] recovery and inspection of the reusable boosters after the second flight revealed that hot gases from inside the rockets had inexplicably impinged on the fragile seals, causing them to be partially eaten away. The Agency officially dropped the "redundancy" classification on the joint, noting that the effect of a primary O-ring burn-through would be "Loss of mission, vehicle and crew due to probable case burst resulting in fire and deflagration."

Although its official promotional films optimistically proclaimed that "by the mid-1980's there will be two launches *per month* . . ."[9], NASA consistently had to revise its projected flight rates. Launch delays and postponements became the norm. In 1983 and 1984, a total of only nine missions were flown. In spite of this, the "operational shuttle" pronounced by Reagan in 1982 became dogma, reinforced, according to one NASA insider, by "NASA's need to impress Congress and the White House and assure the agency's continued funding."[10]

Richard Cook, a program analyst in the Budget Office at NASA Headquarters at the time of the disaster, explained that the Agency "had an extraordinarily strong commitment to the notion of an operational shuttle system that was going to work just like a scheduled airline." As Cook explained, Reagan's pronouncement in effect "froze" the shuttle's design. Since it officially was no longer considered an experimental craft, "money for any type of redesign effort was virtually non-existent."[11] Consequently, known design problems were inclined to be viewed as a "fly-as-is" condition. If NASA admitted the booster design was faulty, it would have had to abandon Thiokol as its sole source, and provide substantial ($100+ million) "qualification funds" (front-end financial support) to other contractors for production and testing, money which would have had to come out of NASA's limited—and declining—budget. Within this context, according to Cook, NASA's insistence on escalating the flight rate from its 1985 high of nine missions to fifteen flights in 1986 (the year of the *Challenger* disaster) and ultimately two per month by 1990, created an environment in which "there was not much chance for anyone to be heard who thought things should slow down or stop for safety reasons."[12]

That view was corroborated by NASA's former Program Manager for Solid Rocket Boosters, Larry Mulloy, who shortly after the disaster conceded that the push to accelerate the flight rate

> can't help but influence the degree of risk that one would take. But to me, that's a self-imposed thing. You make a commitment and you try your damndest to meet it. It's probably self-imposed professional pride, doing what you by God said you were going to do.[13]

This "unrelenting pressure to meet an accelerating flight schedule"[14] resulted in a relaxation of the safety standards NASA had become legendary for during the 1960's quest to land a man on the moon: As Milton Silviera, NASA's Chief Engineer in charge of Safety, Reliability and Quality Assurance at the time of *Challenger*, explained:

> In the early days of the space program, we were so damned uncertain of what we were doing that we always got everybody's opinion. We could ask for continual reviews, continual scrutiny by anybody we had respect for, to look at this thing and make sure we were doing it right. As we started to fly the shuttle again and again, I think the system developed false confidence in itself and didn't do the same thing.[15]

Indeed, at the time of the disaster, only one person (out of a staff of twenty) at NASA Headquarters was assigned responsibility for tracking shuttle safety concerns (and that, quarter-time); another was assigned 10 percent time to studying flight safety issues. (The Rogers Commission took note of this deterioration in Quality Control in a separate chapter devoted to the Agency's "Silent Safety Program." In a subsequent chapter entitled "Pressures on the System," the Commission observed: "Another obstacle in the path toward accommodation of a higher flight rate is NASA's legendary

'can-do' attitude."[16] The Commission cautioned that "NASA's attitude historically has reflected the position that 'We can do anything,' and while that may essentially be true, NASA's optimism must be tempered by the realization that it cannot do everything."[17] Or, as Commissioner Feynman observed in his now-famous addendum to the Rogers report, "For a successful technology, reality must take precedence over public relations, for nature cannot be fooled."[18])

According to Richard Cook (the first official to blow the whistle on NASA management's long-standing awareness of the O-ring erosion problems), "NASA—with its history of spectacular successes—tended to view itself as a uniquely all-knowing and perfected entity, locked into its historic gung-ho, can-do attitude, and could scarcely conceive that it was on the verge of self-destruction." In Cook's opinion, "This self-deception appeared to be most rampant at the management levels, since plenty of the troops, including the astronauts, were concerned about the many dangers in the Shuttle program."[19] This view was confirmed by Commissioner Richard Feynman, who discovered in interviews with Marshall Center personnel that estimates on the probability of a total failure varied wildly between managers (an incredible 1 in 100,000) and program engineers (1 in 100 to 1 in 200).

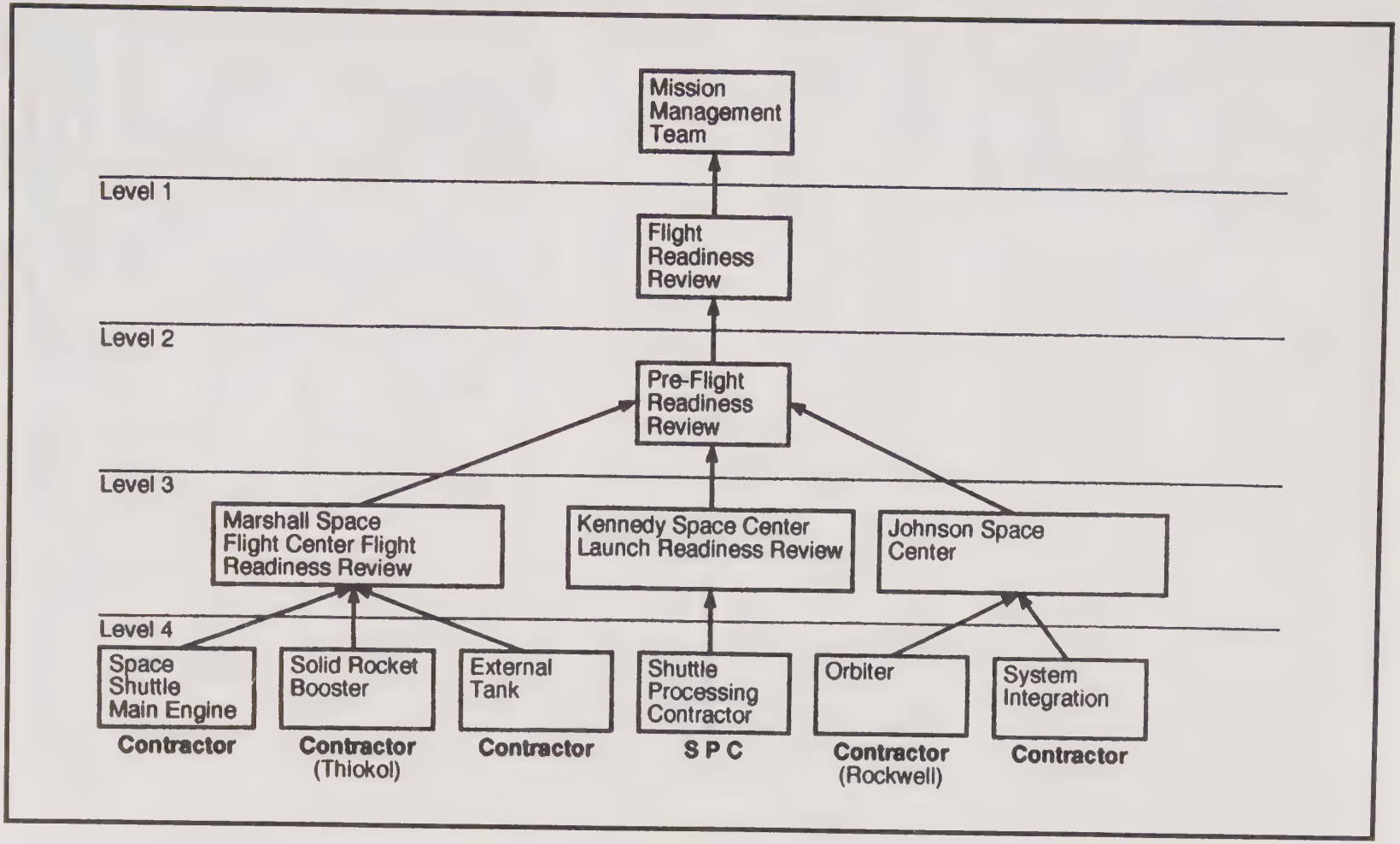
NASA's Flight Readiness Review System and the O-ring Erosion Problem

To coordinate its intricate technological and organizational system, NASA had adopted an essentially "matrix" form of organization, interweaving both program (e.g., launch) and institutional components (e.g., the NASA centers: most notably, the Marshall Space Flight Center in Huntsville, Alabama; the Johnson Space Center in Houston, Texas; and the Kennedy Space Center in Florida).

The Flight Readiness Review (FRR) was a carefully planned, step-by-step activity designed to certify the readiness of all elements of the shuttle (e.g., orbiter, boosters, external tank, launch pad, etc.) prior to each launch. As shown in Figure 4, the process was initiated with a Level 4 contractor certifying (in writing) the flight readiness of its component to the appropriate Level 3 project managers at a given NASA center. For the rocket boosters, Morton Thiokol, the solid rocket motor (SRM) contractor—either through Joe Kilminster, the Vice President of Space Boosters, or Allan McDonald, the Director of the SRM Project—provided that certification to managers at the Marshall Space Flight Center (i.e., Larry Mulloy, the SRB (solid rocket booster) Project Manager, and Stanley Reinartz, the overall Shuttle Projects Manager).

This review (conducted at Marshall) was followed by a Level 2 Review (also called the Pre-Flight Readiness Review), in which representatives from both Level 4—Thiokol—and Level 3—Marshall—conferred with NASA's overall (Level 2) Shuttle Program Manager (Arnold Aldrich), along with representatives of other NASA Centers and Level 4 elements (e.g., Rockwell

Figure 4
NASA's Flight Readiness Review (FRR) System (*Source: Rogers, 1986: p. 83*)



for the orbiter; Martin Marietta for the external tank). In this review, each element had to attest that it had "satisfactorily completed the manufacture, assembly, test, and checkout [of that element], including the contractor's certification that design and performance are up to standard."[20] The FRR process culminated in the Level 1 Review, conducted shortly before a launch (usually about 2 weeks). The Level 1 Review was a conference chaired by the NASA Associate Administrator for Space Flight (Jesse Moore), and attended by Arnold Aldrich and the center directors and project managers from Johnson, Marshall and Kennedy, along with senior contractor representatives. Its purpose was to determine if any significant problems had surfaced which could warrant rescheduling of a flight and, if none were noted, certify that the launch was a "Go." A Mission Management Team was then established for each particular mission, which assumed final responsibility for the shuttle's readiness from 48 hours prior to launch through the end of the mission.

Problems which surfaced during these reviews were supposed to be flagged and earmarked for special attention ("tracking") and resolution. Although O-ring damage had disappeared for seven flights during 1982 and 1983, when they resurfaced on Shuttle Mission 10 in early 1984, Thiokol posed this vexing question during the initial (Level 3) FRR for Mission 11: "If the primary O-ring allowed a hot jet to pass through, would the secondary O-ring survive the impingement?"

NASA Headquarters (Level 1)—acting on the recommendations of their program managers at the Marshall Space Flight Center—decided to proceed with the mission—"accepting [the] possibility of some O-ring erosion due to hot gas impingement" (Level 1 Flight Readiness Review, March 27, 1984). From that point forward (Missions 11 to 24), damage would occur on all but three flights.

In January of 1985, following a particularly cold launch (53°F, on Mission 15), hot gases for the first time actually *penetrated* the primary seal in one of the booster joints, charring (but not eroding) the critical secondary O-ring. When he inspected the boosters upon their recovery and disassembly, Roger Boisjoly—the contractor's top expert on rocket O-ring seals—recalled the near-frigid temperatures at lift-off and reasoned that the cold was partially responsible for the dangerous development. At his insistence, Thiokol went into the February 9 Level 3 FRR for the next mission highlighting two main points (see Exhibit 6A):

- For the first time, heat effect on a secondary O-ring had been observed;
- Low temperature enhanced the probability of O-ring damage. Mission 15 had experienced worst case temperature change in Florida history.

At the subsequent Level 2 Review on February 12th, both of these clarifiers had been excised by Marshall managers (see Exhibit 6B). And by the time Marshall's Larry Mulloy briefed NASA higher-ups for the Level 1 Review on February 21, all the references to low-temperature effects and O-ring damage that had been retained in the Level 2 Review had been deleted (see

Exhibit 6C). Instead, as the Rogers Commission pointed out, "a single reference indicated the O-ring erosion and blow-by was 'acceptable' because of 'limited exposure' time and 'redundancy.'"[21] Since Headquarters had previously accepted that some degree of O-ring damage was inevitable (after Mission 10), the Marshall managers were reluctant to threaten the "operational shuttle" ideology with information that could bring the program to a dead stop, opting to track the problem internally. As Roger Boisjoly conjectured,

> To stop the flights, it takes an inordinate amount of courage—"intestinal fortitude," if you will. Because all of a sudden, you will be the focal point for stopping the Space Program. And I really believe that that's the bottom line as to why no single individual was able to come forth even if they had the authority to do so: Because it would have been tantamount to terminating one's career in the Space Program.[22]

This view was substantiated by Richard Cook in a 1986 interview with *The New York Times*, in which the former NASA analyst explained that, in meetings with the Shuttle managers,

> A middle-level engineer with safety concerns is just a little guy. You aren't going to find an engineer with 20 years' experience and a livelihood to protect stand up and say: "Excuse me, but we might have an explosion on the next shuttle flight because the O-rings might break." It's just not going to happen. If someone did get up, he would quickly be branded a "naysayer." I never said a word in those meetings. I was a nobody, more junior than the veteran engineers. And there is always the nagging thought in the engineers' minds that "Gee: We may be wrong. Maybe nothing will happen."[23]

Repercussions of O-ring Damage Assessment at Marshall, Thiokol, and NASA Headquarters

Inside the Marshall Space Flight Center. The Marshall Space Flight Center (MSFC) operations were kept under tight rein by its Director, Dr. William Lucas. As investigative writer Malcolm McConnell discovered in his groundbreaking analysis of *Challenger*, Lucas's autocratic leadership style had grown over the years "to create an atmosphere of rigid, even fearful, conformity among Marshall managers. . . . Like many demanding task masters, he required absolute personal loyalty."[24]

Under the Freedom of Information Act, McConnell obtained (and later provided to the author) a copy of a letter sent to the Marshall Inspector General's Office during the Rogers Commission Investigation. The letter, prepared by an anonymous but experienced Marshall program manager identified only as "Apocalypse," noted:

> The Marshall Space Flight Center is run by one man, William R. Lucas. His style of management can best be described as feudalistic. In his ten year tenure as center director, he has established a personal empire built

> on the "good old boy" principle. The only criteria for advancement is total loyalty to this man. Loyalty to country, NASA, the space program, mean nothing. Many a highly skilled manager, scientist, or engineer has been "buried" in the organization because they underestimated the man's psychopathic reaction to dissent.

As McConnell observed, "this chilling condemnation . . . was independently confirmed by four reliable sources with collective decades of experience dealing with this man."[25] "Apocalypse" argued that NASA's vaunted Flight Readiness Review System was not serving its intended purpose:

> Rather, it established a political situation within NASA in which no center could come to a review and say that it was "not ready." To do so would invite the question, "If you are not ready, then why are you not doing your job? It is your job to be ready." . . . As a consequence, each center gets up and basically "snows" Headquarters with highly technical rationales that no one but the immediate experts involved can competently judge. *Lucas made it known that under no circumstances, is the Marshall Center to be the cause for delaying a launch.*
>
> And we vote. . . . *In the twenty-five Center Level Flight Readiness Reviews that I have participated in, never has there been a single negative vote from a Marshall Board member or a Marshall contractor that we are not ready.* This amounts to hundreds of yes's and not a single No. This speaks for itself. This process is an exercise in self-disillusionment and illustrates the tremendous gap between MSFC and NASA management decision making and what happens in the real world. The contractors understand that Lucas can get them fired, hence they tell NASA what they know NASA and MSFC want to hear: "We are ready."
>
> Lucas proceeded at risk rather than have the MSFC delay the program, a classic management error in shortsightedness.
>
> God help us all. [Emphasis in the original]

In the wake of Mission 15, Marshall placed a launch constraint on the rocket booster joint for all subsequent flights, although it did not inform Levels 1 and 2 that it had done so or why. (However, the constraint was waived regularly by the SRB Manager at Marshall—Mulloy—for each consecutive mission, up to and including *Challenger.*)

Inside Morton Thiokol. On April 29th, *Challenger* took to the air for the seventeenth flight of the shuttle program. This time, the primary O-ring in one of the booster's *nozzle* joints was completely destroyed, at essentially a room-temperature launch, resulting for the first time in the actual *erosion* of a secondary seal. As Mulloy bluntly declared,[26] "We were lucky, just dumb-ass lucky, that we didn't have a disaster on *that* mission." The seal failures on Missions 15 and 17 prompted repercussions at MTI and NASA.

Alarmed by the findings of his postflight damage assessment, Roger Boisjoly sent a formal memo to the Vice President of Engineering at MTI, Robert Lund, on July 31, the purpose of which was "to insure that management is fully aware of the seriousness of the current O-ring erosion problem

in the SRM [solid rocket motor] joints from an engineering standpoint." (See Exhibit 3.) In his memo, Boisjoly observed that "[the] mistakenly accepted position on the joint problem was to fly without fear of failure," and warned that if the same problem occurred on a field joint ("and it could," he stressed) "[the] result would be a catastrophe of the highest order: Loss of human life." He concluded his memo with the dire prediction:

> It is my honest and very real fear that if we do not take immediate action to dedicate a team to solve the problem, with the field joint having the number one priority, then we stand in jeopardy of losing a flight along with all the launch pad facilities.

In order to control its distribution and confine the problem to Thiokol, Boisjoly's superior labeled the memo "company—private." In response to the memo, a task force—including Boisjoly and several other engineers—was established to look into the problem.

One of the first tests run by the Thiokol engineers was to rig up a model of the O-ring joint and measure the ability of the O-rings to respond to the opening/flex rate of a simulated rocket segment at various temperatures. Their tests confirmed that "O-ring resiliency (its capability of following the metal) is a function of temperature." As the engineers noted in their report to Marshall:

- At 100°F, the O-ring maintained contact;
- At 75°F, the O-ring lost contact for 2.4 seconds;
- At 50°F, the O-ring did not reestablish contact in 10 minutes, at which time the test was terminated. The conclusion is that secondary sealing capability in the SRM field joint cannot be guaranteed.

(Earlier tests, the results which were universally accepted by participants in the launch decision process at NASA, had established that if a leakproof seal were not established within the first three-tenths of a second of firing, there was "a high probability of no secondary seal capability"—i.e., a total failure was likely.)

Inside NASA Headquarters. Unknown to Thiokol, concerns about the joint were being raised simultaneously at NASA Headquarters in Washington. At the request of his boss, Richard Cook—a newly hired program analyst in the NASA Budget Office—had just completed interviews with headquarters engineers from the Office of Space Flight concerning the potential budgetary implications of the widely known O-ring problems. Having been told by HQ engineers that they "held their breath" at each launch because "this thing could blow up,"[27] Cook sent a memo to his Budget Office superior which indicated:

> Discussions with program engineers show this to be a potentially major problem affecting both flight safety and program costs. There is little question that flight safety has been and is still being compromised by

> potential failure of the seals, and it is acknowledged that failure during launch would certainly be catastrophic.

In the worst-case scenario, he noted, shuttle flights would have to be suspended and existing rockets would have to be scrapped while the boosters were redesigned. Although it went without saying, Cook added, "The impact on the FY 1987–1988 budget could be immense." Cook received no acknowledgment whether the concerns raised in his memo were being dealt with or not.

The NASA Headquarters Briefing—August 1985

Suspecting that the Marshall Center was withholding critical information, NASA Headquarters decided to arrange an "end-around," inviting Thiokol to present a comprehensive review of "the erosion of SRM pressure seals," including "failure history, current status and options for [correction]." Marshall, however, found out about the meeting and insisted that Thiokol preview their charts in a dry run at the Marshall Center in Alabama. At their insistence, Thiokol agreed to delete explicit references to temperature concerns, and substitute instead a less pointed reference to "O-ring resiliency." The briefing, with participation by senior officials from both Thiokol (e.g., McDonald) and Marshall (e.g., Mulloy), took place on August 19th. Representatives from the Astronauts' Office (Level 2) were not invited.

In the 56 charts that were presented, Thiokol addressed the resiliency of the joint (i.e., reduced sealing capabilities at lower temperatures) as its "highest concern," concluding that if the primary O-ring "leaks due to erosion or lack of sealing, the secondary [O-ring] may not seal the motor." (See Exhibit 7.) The contractor specified conditionally that it was "safe to continue flying," but stressed that "the lack of a good secondary seal in the joint is most critical," and that "efforts need to continue at an accelerated pace to eliminate SRM erosion." Although the Presidential Commission would later determine that the briefing "was sufficiently detailed to require corrective action prior to the next flight,"[28] Jesse Moore, NASA's top shuttle official, reviewed the deliberations, and concluded: "While a solution had to be found as soon as possible, it was not a flight safety issue requiring grounding the fleet."[29] NASA would fly the flawed joint "as is," and fix it as they went along. (The House Investigation[30] took exception to that determination, finding that "meeting flight schedules and cutting cost were given a higher priority than flight safety.")

Larry Mulloy, the NASA/MSFC Program Manager for Solid Rocket Boosters, later underscored the organizational significance of the August briefing, with a tongue-in-cheek reference to the respect he accorded the judgment of his superiors: "At that meeting all the 'Smart People' looked at the data and all the 'Smart People' decided to push on. That factored into my decision [on *Challenger*] because we had signed on to that risk, and had accepted this situation on every flight."[31] He also observed that "the decision to broaden the area of acceptable risk . . . after we saw the complete

destruction of the primary O-ring and substantial damage to a secondary O-ring [on Mission 17] was the pivotal decision that made *Challenger* inevitable. That was a very large mistake that we all collectively made."[32] As Commissioner Richard Feynman would later note, the decision-making process from launch to launch was like "a kind of Russian Roulette. . . . We can lower our standards a little bit because we got away with it last time. And an argument is always given that 'Last time, it worked.' You got away with it, and it was a risk, but it shouldn't be done over and over again like that. When I look at the [flight readiness] reviews, I find a perpetual movement heading for trouble."[33]

As Richard Cook opined,[34] "They had been launching the shuttle for four years, and they had been launching spacecraft for 20 years, and I don't think that they believed that they were going to blow one up. They thought—at least at the management level—that they could get away with it. They just made a major mistake in thinking they could continue to fly while the repair was underway." In an interview with *The New York Times*, Cook also pointed out that the "whole culture of this place calls for a 'can do' attitude that NASA can do whatever it tries to do, can solve any problem that comes up as it roars ahead toward twenty-four shuttle flights a year."[35]

Morton Thiokol's Seal Task Force

During the Fall of 1985, the seal task force established at Morton Thiokol in response to Boisjoly's July memo was turning out to be a virtual paper tiger. Bob Ebeling, the task force leader, appealed to Thiokol's SRM Director, Allan McDonald, for support (see Exhibit 4): "HELP! The seal task force is constantly being delayed by every possible means," and concluded: "We wish we could take action by verbal request, but such is not the case. This is a red flag." Scott Stein, another member of the task force, lamented in a memo to MTI's Vice President of Engineering Bob Lund that "we are constantly being hog-tied by paperwork. . . . If changes are not made to allow us to accomplish work in a reasonable amount of time, then the O-ring investigation task force will never have the potency necessary to resolve the problems in a timely manner."

On October 3, 1985, the Vice President of the Space Boosters Program at Thiokol, Joseph Kilminster, agreed to meet with the task force and hear out their concerns. In the end, he only insisted they continue to follow established policies and procedures, working through existing channels to do "whatever was necessary" to "nurse each task" through to completion. Roger Boisjoly's October 4 Activity Report summed up the engineers' feelings at the time: "[Kilminster] plain doesn't understand that there are not enough people to do that kind of nursing of each task, but he doesn't seem to mind directing that the task nevertheless gets done." Boisjoly concluded the report with this observation:

> The basic problem boils down to the fact that *all* M.T.I. problems have #1 priority and that upper management apparently feels that the SRM Program is ours for sure and the customer be damned.

Progress on the redesign was sluggish; the new boosters were not projected to arrive for testing until November of 1986—a full 13 months later.

On January 21, 1986, just one week before the launch of the *Challenger*, NASA—responding to intense pressure from Congress—announced it would solicit bids for a "second source" to supply shuttle rocket boosters. Morton Thiokol's lucrative and exclusive (sole-source) contract with the Agency—a contract worth over $1 billion—was in jeopardy. And NASA was Thiokol's single biggest customer.

The "Flawed Decision": January 27 and 28, 1986

The crew for *Challenger* Mission 51–L arrived at Cape Canaveral on January 23d, 1986. Among them was Christa McAuliffe, a school teacher from New Hampshire, who had been hand-picked by President Ronald Reagan from among 142 applicants to become America's first "civilian in space." McAuliffe's presence represented a public relations bonanza for NASA, reviving interest in shuttle flight by a media bored by the seemingly routine missions to low-earth orbit and back. Reagan himself had proposed the Civilian in Space program during the 1984 Presidential campaign, decreeing that "one of America's finest—a schoolteacher" would be selected for the honor. (By now firmly ensconced in the public eye as an operational vehicle, no further justification was required for placing an ordinary civilian on board.) The official Crew Activity Plan for the *Challenger* mission revealed that her planned "lessons-from-space" were switched deliberately "from flight day 4 to flight day 6 . . . to keep them on a weekday." A launch on or before Tuesday the 28th, therefore, would guarantee that McAuliffe's televised lessons (for which a Presidential phone call to *Challenger* was scheduled) would occur while schools were in session. To slip the launch past January 28th would bump her lessons to the weekend. (The 28th was also significant because it was the scheduled date for the President's Annual State of the Union Address to Congress.)

More Delays

A combination of bad weather and technical glitches forced additional postponements of the *Challenger* launch, first to the 27th, then to the 28th. Coming right on the heels of the most delayed flight in shuttle history (the January 12th Columbia mission which experienced a record-breaking seven delays), it was a disappointing setback for NASA. The Agency's embarrassment was compounded by the evening network news reports. CBS's Dan Rather remarked, "Yet another costly, red-faces-all-around space shuttle launch delay." ABC's "World News Tonight" taunted, "Once again, a flawless lift-off proved too much of a challenge for *Challenger*."

As the launch was being postponed on Monday the 27th, another potential delay loomed on the horizon: A cold front was approaching, with overnight lows expected to drop into the teens. The predicted temperature for the 9 a.m. rescheduled launch time on January 28th was 29°F. As the countdown to lift-off continued, the Mission Management Team at the Kennedy Space Center (KSC), chaired by Jesse Moore, asked all parties to review the implications of the unprecedented cold for the launch. Thiokol was asked to assess the specific effect the low temperature would have on the O-rings. (Refer to Exhibit 8 for an overview of the launch—and institutional—chains of command.)

An afternoon telecon between Thiokol in Utah and Marshall Center personnel in Alabama and Florida ended with Thiokol making it clear to NASA, based on their engineering assessment, that as long as the temperature fell outside of their previous experience base (53°), they would oppose the launch. Rather than accept the recommendation outright, NASA asked Thiokol to fax its data to Marshall and the Kennedy Space Center for a full review; the parties agreed to deliberate the issue in more detail and reach a final decision during a follow-up telecon later that evening. Shortly after the afternoon telecon ended, Judson Lovingood, Reinartz's Deputy Manager of Shuttle Projects at Marshall, called his boss in Florida to suggest that if Thiokol persisted with their opposition, they should not launch. He also recommended that Reinartz alert Arnold Aldrich, the next higher official in the launch decision chain (see Exhibit 8) about the evening telecon and the "Impending good possibility of a launch delay."[36] Given that prospect, Lovingood reasoned that Reinartz should prepare Aldrich for "going on up the line and getting Level 1 together" (i.e., Jesse Moore, the highest-ranking official in the launch chain—see Exhibit 8) to make a final decision.

Reluctant to be the bearer of bad news, however, Reinartz set aside Lovingood's suggestions, electing to await the results of the evening telecon. Later, before departing to engage in the final telecon, Reinartz and Mulloy met with Lucas (the MSFC Director) and James Kingsbury (the MSFC Director of Science and Engineering) in their motel room near KSC. The four Marshall managers discussed the impending "no-launch" recommendation from Thiokol, with Lucas reportedly querying: "That sure is interesting: We get a little cold nip and they want to shut the Shuttle System down? I sure would like to see their reasons for that."[37] According to Mulloy, "if they were going to come in and say, 'We can't launch tomorrow 'cause we can't operate an SRM at 30°,' we were going to demand to know why, and not accept it on the basis of some hand-wringing emotion."[38]

The Evening Telecon

During the final telecon between Thiokol, Marshall, and Kennedy (see Exhibit 1), the contractor—as anticipated—recommended against the launch. Included in Thiokol's presentation were the results of the resiliency tests conducted in preparation for the August Headquarters Briefing, which revealed that although the O-rings maintained a perfect seal in a simulated

field joint at 100°F, they took 2.4 seconds to seal at 75° . . . and over 10 minutes to seal at 50°. Given the extremely low temperature projections, Bob Lund, the VP of Engineering, informed NASA that Thiokol did not recommend flying outside of their existing data base, that the launch should be postponed until the temperature reached at least 53°F. As Lund explained, "It was a very definite question of conservatism: You know, this program has people on it, and so I am very concerned about that, and I want to make sure that if there is a hint of a problem, that we are not extending that. We didn't have any data to indicate we should go beyond that."[39]

Confident that they had mustered sufficient evidence to cast aspersions on the safety of the launch and warrant a delay, the four senior managers and ten engineers huddled around the conference table in Thiokol's Management Information Center in Utah were stunned when their position was greeted with hostile skepticism by NASA. Larry Mulloy, the Project Manager for Solid Rocket Boosters at NASA, remained unswayed by Thiokol's justifications for not flying outside of the existing experience base (53°F) and vigorously reproached the engineers for basing their assessment in part on "qualitative" impressions from Mission 15. As the only participant in the telecon to have personally witnessed the damage to the boosters from that flight, Boisjoly steadfastly insisted that a decision to launch below 53°F was "away from goodness in the current database."[40]

Mulloy asked Joseph Kilminster, the VP of Space Boosters at MTI, for Thiokol's official position on the matter. As the first link in the official launch program chain of command (see Exhibit 8), it was Kilminster's responsibility to vote "yea" or "nay." Kilminster responded that based on the engineering position just presented he could not recommend launch. Mulloy was nonplussed: "I fully understood what Mr. Kilminster was saying at that time: He did not say, 'The engineering *data* says that you can't launch.' He was saying 'I've got an engineering *recommendation* here and based upon that, I certainly cannot recommend launch.'" In Mulloy's opinion, Kilminster's conclusion was "based on data that didn't seem to hang together, so I challenged that."[41] It was the first time in the entire history of space flight that a contractor's official recommendation not to launch had been challenged. As Boisjoly explained,[42] "NASA since early space flight always forced us as contractors to prove that it was safe to fly, not vice versa."

Mulloy bristled at Thiokol's intransigence: "My God, Thiokol! When do you want us to launch? Next *April*?—The eve of a launch is a hell of a time to be generating new launch commit criteria!" In his testimony before the Commission, Mulloy explained his reasoning: "There are currently *no* LCC's [launch commit criteria] for joint temperature. What you [MTI] are proposing to do is generate a new launch commit criteria on the eve of a launch, after we have successfully flown [i.e., without mishap] with the existing LCC 24 previous times. With this LCC—i.e., 'Do not launch with a temperature [below] 53°—we may not be able to launch until next April. We need to consider this *carefully*, before we jump to any conclusions."[43.a] Emphasizing that O-ring damage had been observed on both "hot" and "cold" launches,

Mulloy charged that Thiokol was being "illogical."[b] (For notes a and b, refer to the Notes section at the end of this case.)

He asked the Chief Engineer at Marshall, George Hardy, for his opinion. Hardy indicated that he was "appalled" by Thiokol's data, but added that he "would not launch over the contractor's objection." Weary of the seeming stalemate in the discussion, which by that point had dragged on for nearly an hour and a half, Mulloy offered an extended summary of the proceedings, ending with the assertion that Thiokol's data were "inconclusive." The Solid Rocket Booster Manager, for one, was concerned that accepting Thiokol's recommendation might not "sit well" with his bosses: "Where can I find these data?" he later confessed to thinking, ". . . Something to support this conclusion that I'm going to call somebody [superiors at Level 2 and Level 1] and tell 'em we can't launch tomorrow. What do I have, other than belief, gut feel, and faith?"[44]

Stanley Reinartz, Mulloy's superior and the next ranking member in the launch decision chain (see Exhibit 8), asked Joe Kilminster to respond to Mulloy's summation. Taken aback by NASA's hostile stance, Kilminster instead requested a 5-minute, off-the-line caucus "to re-evaluate the data"—in effect, asking for a break in the telecon. Reinartz granted the caucus, and the telecon went on mute.

The Thiokol Caucus: "We Have to Make a Management Decision"

Jerry Mason, the Senior Vice President at MTI, turned to the VPs clustered around him at the head of the conference table in the Management Information Center (see Exhibit 9) and softly announced, "We have to make a management decision." Interpreting Mason's comment as a signal that the managers would proceed to reverse the no-launch recommendation, a pair of infuriated engineers—Arnold Thompson and Roger Boisjoly—vigorously urged their superiors to stick to their original decision. Thompson was the first to do so. Wondering why they couldn't "just wait another day," he got up from his position near the end of the table (see Exhibit 9) and sketched the problems with the joint on a note pad in front of the managers. He abandoned his effort and returned to his seat after Mason disciplined him with an unfriendly look as if to say, as Boisjoly described it, "Go away and don't bother us with the facts."[45]

Boisjoly then stood up from his seat across from the managers (see Exhibit 9), slammed the photographic evidence from previous postflight inspections down in front of them, and, "literally screaming at them, admonished them to look at what the data are telling us: Namely that cold temperature indeed increased the risk of hot gas blowing by the joint."[46] He also stopped short when it became evident that his struggle was futile: Mason glared at him icily with—as Boisjoly vividly recalled—"the kind of look you get just prior to being fired," and the rocket engineer backed down.[47]

Although Thompson and Boisjoly, MTI's top seal experts, both knew the launch would be unsafe, they were unable to get their managers to listen to them. "There was no way to engage them," Boisjoly explained.

"They [the four managers] were having their own little meeting right in front of us, to the total exclusion of myself and my engineering colleagues [i.e., the ten engineers]."[48] Questioned as to why he had dismissed the warnings of his acknowledged experts, Mason later testified, "Although they were outspoken . . . we listened to their reasons more than their intensity, and the reasons boiled down to the fact that we found ourselves in a position of uncertainty that we were unable to quantify."[49]

Brian Russell, one of the engineers present for the telecon, also noted that he "had the distinct feeling that we were in the position of having to prove to them [NASA] that it was *unsafe*, instead of the other way around. Which was a totally new experience." He also recalled wondering "whether I would have the courage, if asked, to stand up and say 'No.' I remember that distinctly. However, we were not asked, as the engineering people. It was a management decision at the Vice Presidents' level, and they had heard all that they could hear."[50] Boisjoly further explained to the Commission, "I had my say, and I never take [away] any management right to take the input of an engineer and then make a decision based upon that input, and I truly believe that. . . . So there was no point in me doing anything any further."[51]

Meanwhile, at NASA's Marshall Space Flight Center (see Exhibit 1), engineer Ben Powers was lobbying in support of Thiokol's conservative stance, but did not force the issue when his concerns, too, fell on deaf ears. As Powers told the Commission, "You don't override your chain of command. I made my position known to [my boss]; he did not choose to pursue it. At that point, it's up to him. He doesn't have to give me any reasons; he doesn't work for me. It's his prerogative."[52]

Back at Thiokol, Mason asked his executive subordinates—nearly under his breath—"Am I the only one who wants to launch?" Bob Lund, the VP of Engineering, continued his lone resistance. "What followed made me both sad and angry," Boisjoly explained. "They were taking our data which supported a position not to launch, and trying to turn it around to support a launch decision. It was really disgusting."[53] In the end, Lund capitulated 25 minutes into the caucus when Mason turned to him and point-blank urged him to "[t]ake off your engineering hat and put on your management hat."

A vote poll was taken of only the four senior managers, who agreed unanimously to launch. Asked why he did not include his engineers in the final vote, Mason explained, "We only polled the management people because we had already established that we were not going to be unanimous."[54]

At 11:00 p.m., Thiokol went back on the line and Joe Kilminster announced the reversal to Reinartz, who asked the assembled participants if there were any disagreements with the Thiokol position. Hearing none, he asked Kilminster to put the final Thiokol recommendation in writing and fax it to Kennedy and to Marshall, whereupon he promptly adjourned the meeting, satisfied that the matter had been "properly dispositioned." Thiokol had given NASA the "green light" to launch, as the Presidential Commission concluded, "in order to accommodate a major customer."[55] In Boisjoly's

view,[56] since MTI management "fully supported the decision not to launch below 53°F prior to the caucus," the caucus constituted "an unethical decision-making forum, resulting from customer intimidation." This, the rocket engineer observed,[57] was further underscored by "NASA's immediate acceptance of the new decision—which was consistent with their desires—and please note that no discussion or probing questions were asked!"

The Morning After: "Going by the Book"

The next morning, as Mulloy and Reinartz participated in the final Mission Management Team meetings, no mention was reportedly made to top shuttle officials of Thiokol's initial reservations and no-launch recommendation. Although Reinartz did inform his *institutional* superior, Dr. William Lucas, of Thiokol's concerns (see Exhibit 8), he was taken to task by Chairman Rogers for "going by the book" and allegedly failing to pass word of the Thiokol disagreement on up to officials in the *launch decision chain* at Levels 2 and 1 (see Exhibit 8). According to Reinartz, "I did not perceive any *clear* requirement for interaction with Level 2, as the concern was 'worked' and dispositioned with *full agreement* among all responsible parties as to that agreement."[58] As Mulloy explained in testimony, "We work many problems at the orbiter and the SRB and the External Tank level that *never* get communicated to Mr. Aldrich [Level 2] or Mr. Moore [Level 1]. It was *clearly* a 'Level 3 issue' that *had* been resolved."[59]

"Rockwell cannot assure it is safe to launch . . ." In the early morning hours on January 28th, an ice inspection team had surveyed the launch pad and discovered it was encased in ice, prompting one member to comment, "It looks like a winter wonderland out here." The head of the ice team, Charles Stevenson, radioed the Director of Engineering at the Kennedy Space Center to advise him. "The only choice you've got today is not to go."[60] The temperature at the joint was measured to be 8°F. However, since the system had not identified any specific launch constraints for joint temperature, it was not reported. Larry Mulloy, sitting next to Arnold Aldrich as the reports were coming in, heard Stevenson's remark and thought to himself.[61] "'We aren't going today.' I was *convinced* that this was going to be another scrub day." Asked why he kept those thoughts to himself, Mulloy explained, "That was out of my territory. I didn't clutter my mind with other people's business. Ice on the pad was *not* one of the things I worried about. I had enough to do. That was Aldrich's business. I said nothing."[62]

When Rockwell International, the orbiter contractor, was informed of the ice conditions on the pad, its President, Rocco Petrone, called his representative at KSC and instructed him to "make sure NASA understands that Rockwell feels it is not safe to launch."[63] Glaysher told NASA at the final Mission Management Team meeting (at 9:00 a.m.): "Rockwell cannot assure that it is safe to fly." It was the only time in twenty-five missions, Glaysher explained to the Presidential Commissioner, that Rockwell had adopted an "unsafe-to-fly" position. NASA, however—in the form of Arnold Aldrich (the

second ranking official in the formal launch decision chain—emphasized that "Mr. Glaysher did not ask or insist that we not launch, however."[64] Aldrich merely authorized a 2-hour delay on lift-off, bumping it from 9:00 a.m. to 11:30 a.m., to allow for some of the ice to melt.

Although the ice did not cause the destruction of the *Challenger*, the Presidential Commission would later conclude that "however ambiguous Rockwell's position was, it is clear that they did tell NASA that the ice was an unknown condition. The Commission finds the decision to launch questionable under those circumstances. . . . In this situation, NASA appeared to be requiring a contractor to prove that it was not safe to launch rather than proving it was safe."[65]

During the ensuing launch "hold," none of the three Marshall managers (Lucas, Reinartz, Mulloy) reportedly shared any knowledge of Thiokol's original no-launch recommendation with Aldrich or Jesse Moore, even though the five of them were part of the Mission management team and therefore sat side by side for hours in the firing room prior to lift-off. "We should have suspected something was wrong," one of the officials present in the firing room confided to Presidential Commissioner Robert Hotz,[66] adding, "We're together for hours and usually when we have a launch hold, there's all this talk back and forth between us and our Marshall counterparts. The folks from Marshall didn't say a single word all morning; they were completely tight-lipped."

When William Lucas was asked by the Commission why he said nothing, the Marshall Center Director explained, "That is *not* my reporting channel. *Mr. Reinartz* reports directly to Mr. Aldrich." (See Exhibit 8.) "In a sense, Mr. Reinartz informs me as the institutional manager of the progress that he is making in implementing his program, but I have *never*—on *any* occasion—reported to Mr. Aldrich."[67] As Reinartz told the Commission, however, it was purely "speculative" to consider what Aldrich or Moore would have decided had they been told, "considering that at that point in time we had a final recommendation from the contractor and the concurrence by the Marshall engineering people."[68]

Pressured to launch? According to The House Science and Technology Committee,[69] there were a series of weather-related waivers which had to be granted to clear the way for launch on January 28, including (1) nosecone instrumentation in the external fuel tank, (2) ice on the astronauts' launch pad escape platform, (3) high atmospheric wind shears, and (4) loss of booster hardware. The launch team cleared a general systems waiver in the early hours of January 28 that would have allowed a launch even below the minimum approved atmospheric temperature of 31°F. In Richard Cook's view, NASA overrode this large number of concerns for several reasons, chief among them the fact that the day 4 teacher-in-space telecast, with the Presidential phone call, had to take place on a weekday when schools were in session.

In March of 1991, Cook spoke with a former Reagan aide, who reportedly confirmed his worst suspicions. As Cook Disclosed,[70]

> You will also find in the records a number of statements by public affairs people that there were phone calls in connection with the State of the Union Message where the President was going to make reference to the shuttle and the Teacher-in-Space during his speech before Congress. What these people deny is that these phone calls are reflective of pressure coming from the White House.
>
> The issue remained then, why NASA proceeded?
>
> My opinion, and this is based on discussions that I have had with people involved in the launch and—most particularly—someone who was involved in the White House deliberations at that time that the decision was made by the President of the United States to proceed with the launch in the face of what the President was told were cold weather concerns because they wanted to get the Shuttle in the air in connection with the publicity for the Teacher-in-Space program.

Whether or not any conclusive evidence links the White House directly to the launch, as Roger Boisjoly observed, "a Presidential call wasn't even necessary" since Reagan's stake in this launch was well-recognized throughout the NASA hierarchy.[71] There were additional reasons factoring into the possible urgency to launch, according to Cook:[72]

- Vandenberg Air Force Base in California was coming "on-line" as an alternate launch site, and the temperatures at Vandenberg were generally colder than those at Kennedy. To accept Thiokol's 53°F limit as a launch constraint would have been difficult for NASA to "live with in the future," as Mulloy testified, if Vandenberg was to become a viable site.
- The mobile launch platform on which *Challenger* was poised had to be rolled back into the vehicle assembly building and loaded with the hardware for the March Astro 1 Shuttle Mission, whose schedule would be jeopardized by further delays.

In the opinion of Richard Cook as well as Roger Boisjoly[73] and other Thiokol engineers,[74] this was a situation where the decision to launch had apparently already been predetermined and nobody was going to tell NASA otherwise. Indeed, as Christa McAuliffe's mother Grace George Corrigan recently corroborated, McAuliffe called her the night before and said, "Mom, we're launching, no matter what."[75]

***Challenger's* final voyage.** On January 28, 1986, at 11:38 a.m. EST, *Challenger* lifted off on its final voyage from launch pad 39-B. The freezing overnight temperatures had hopelessly compromised the ability of the O-ring seals to perform effectively—as predicted by the Thiokol engineers. The seals were vaporized instantaneously at ignition and only a fragile seal, formed by the products of combustion, kept *Challenger* from blowing up on the pad.

60 seconds later, the fragile seal shattered, and hot gases began streaming through the joint, like a giant blowtorch directed against the massive external fuel tank.

At T+73 seconds, the fuel tank ruptured, breaking the orbiter into pieces. Pilot Michael Smith's last recorded words were, "Uh-Oh."

The astronauts would die 2 minutes and 45 seconds and 8 miles later when their flight deck slammed into the Atlantic Ocean at a speed of over 200 mph.

For Roger Boisjoly, it was a loss which could and should have been prevented:[76]

> I can't characterize it as an "accident" at all. It was a horrible, terrible disaster. But not an accident. Because we could have stopped it. We had initially stopped it. And then the decision was made to go forward anyways.
>
> I will never forget—and I hope this nation will never forget—the supreme price that the seven *Challenger* astronauts paid by forfeiting their lives for such an irresponsible launch decision.
>
> May we always remember astronauts Onizuka, McAuliffe, Jarvis, McNair, Resnik, Scobee and Smith for their courage and dedication to this nation's space program.

Ancillary Materials on *Challenger*

A three-part videotape and comprehensive instructional module covering the history, the "flawed decision," and the investigation of *Challenger* are available to accompany this case, for a fee. The module includes a packet of readings, an abridged version of the Rogers Commission report, overhead transparency masters, extensive internal NASA and Thiokol correspondence, a decision-making role-play based on *Challenger* data, a sample of authentic Viton rubber O-ring material (while supplies last), three videotapes (*"A Major Malfunction": The Story behind the Space Shuttle* Challenger *Disaster*—150 minutes total viewing time, in eighteen discrete segments), and a Facilitator's Guide. For information call (607) 777–2841. Direct all correspondence to Mark Maier, SEHD, Binghamton University—SUNY, Binghamton NY 13902–6000.

Notes

a. As McDonald would later note in a personal interview on July 1, 1992, Mulloy was "believing in the system more than in the people inputting into that system. . . . Last-minute data ought to be just as important as data generated 6 months ago, and it ought to be able to be inputted that late." This view was shared by Jesse Moore, who explained in testimony before the Rogers Commission, that there was "nothing in the program" that ruled out late changes to launch criteria: "If someone has a problem with the LCC, until it is T-minus-Zero [ignition], you can raise an objection to it" (Rogers Commission Report, p. 1920).

b. Note that NASA and MTI were implicitly only comparing the seven missions which experienced O-ring *problems*, not the *totality* of their flight experience . . . which would have revealed to them that the seventeen launches which experienced

no O-ring damage *all* took place at temperatures above 65°F. That is, *if* they had had access to the full range of data, they would have seen that—based on their flight history—they had a 4 in 4 (100 percent) chance of some damage below 65° but only a 3 in 20 (15 percent) chance above it.

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Exhibit 1

Challenger launch, final tele-conference participants, January 27, 1986. (© *Mark Maier, 1992. Used by permission*)

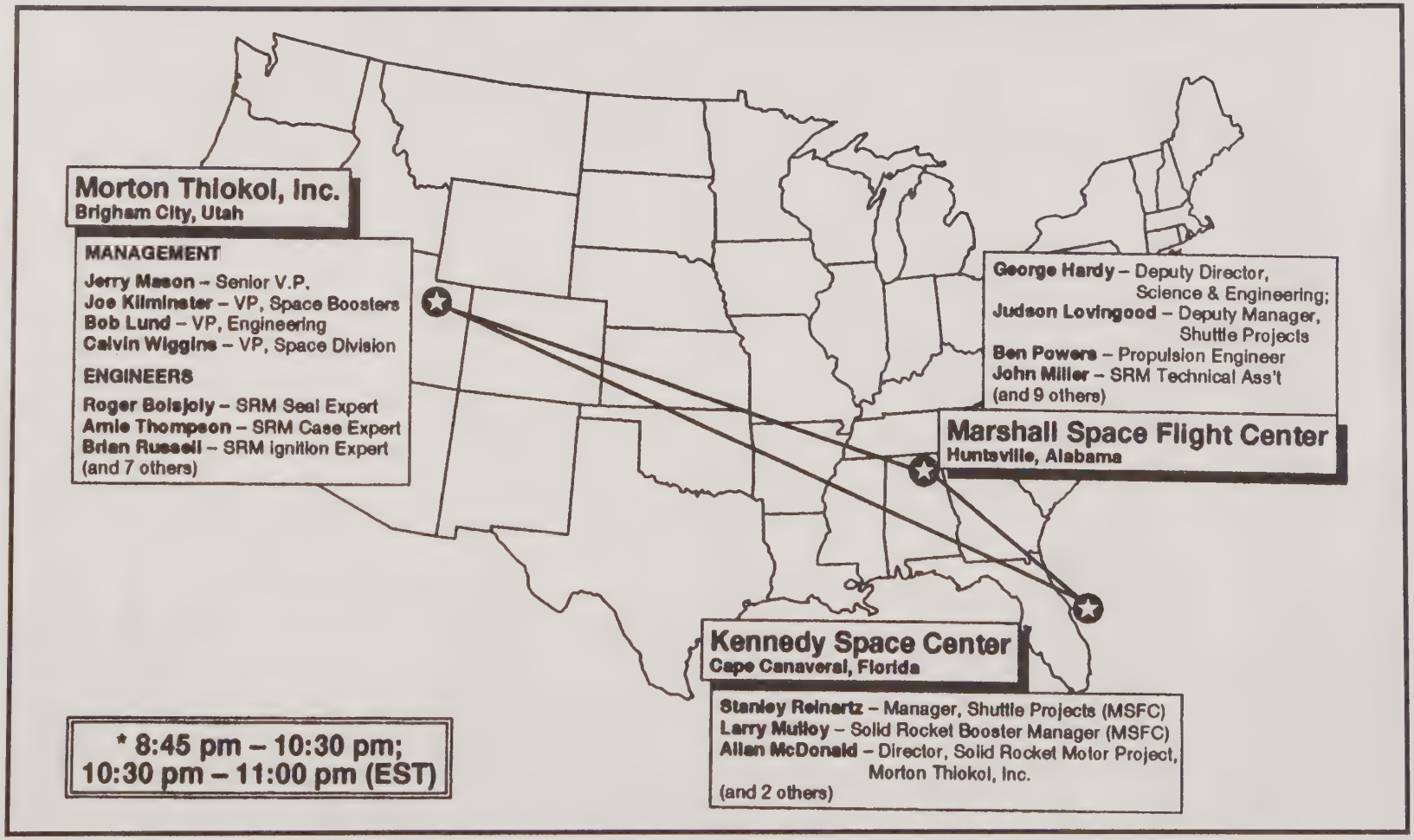


Exhibit 2

MTI's *Challenger* "51-L" launch authorization chart (faxed from Thiokol to Marshall and Kennedy)

MTI ASSESSMENT OF TEMPERATURE CONCERN ON SRM-25 (51L) LAUNCH

- 0 CALCULATIONS SHOW THAT SRM-25 O-RINGS WILL BE 20° COLDER THAN SRM-15 O-RINGS
- 0 TEMPERATURE DATA NOT CONCLUSIVE ON PREDICTING PRIMARY O-RING BLOW-BY
- 0 ENGINEERING ASSESSMENT IS THAT:
  - 0 COLDER O-RINGS WILL HAVE INCREASED EFFECTIVE DUROMETER ("HARDER")
  - 0 "HARDER" O-RINGS WILL TAKE LONGER TO "SEAT"
    - 0 MORE GAS MAY PASS PRIMARY O-RING BEFORE THE PRIMARY SEAL SEATS (RELATIVE TO SRM-15)
      - • DEMONSTRATED SEALING THRESHOLD IS 3 TIMES GREATER THAN 0.038" EROSION EXPERIENCED ON SRM-15
  - 0 IF THE PRIMARY SEAL DOES NOT SEAT, THE SECONDARY SEAL WILL SEAT
    - 0 PRESSURE WILL GET TO SECONDARY SEAL BEFORE THE METAL PARTS ROTATE
      - • O-RING PRESSURE LEAK CHECK PLACES SECONDARY SEAL IN OUTBOARD POSITION WHICH MINIMIZES SEALING TIME
- 0 MTI RECOMENDS STS-51L LAUNCH PROCEED ON 28 JANUARY 1986
  - 0 SRM-25 WILL NOT BE SIGNIFICANTLY DIFFERENT FROM SRM-15

Joe C. Kilminster

JOE C. KILMINSTER, VICE PRESIDENT
SPACE BOOSTER PROGRAMS

MORTON THIOKOL INC.
Wasatch Division

(Note: "SRM-15" is a reference to the previous coldest launch on record—the 53°F launch of Mission 15 in January, 1985.)

Exhibit 3
Roger Boisjoly's July 31, 1985 memo (MTE)

MORTON THIOKOL INC. COMPANY PRIVATE
Wasatch Division
Interoffice Memo

31 July 1985
2870:FY86:073

TO: R. K. Lund
Vice President, Engineering

CC: B. C. Brinton, A. J. McDonald, L. H. Sayer, J. R. Kapp

FROM: R. M. Boisjoly
Applied Mechanics – Ext. 3525

SUBJECT: SMR O-Ring Erosion/Potential Failure Criticality

This letter is written to insure that management is fully aware of the seriousness of the current O-Ring erosion problem in the SRM joints from an engineering standpoint.

The mistakenly accepted poisition on the joint problem was to fly without fear of failure and to run a series of design evaluations which would ultimately lead to a solution or at least a significant reduction of the erosion problem. This position is now drastically changed as a result of the SRM 16A nozzle joint erosion which eroded a secondary O-Ring with the primary O-Ring never sealing.

If the same scenario should occur in a field joint (and it could), then it is a jump ball as to the success or failure of the joint because the secondary O-Ring cannot respond to the clevis opening rate and may not be capable of pressurization. The result would be a catastrophe of the highest order – loss of human life.

An unofficial team (a memo defining the team and its purpose was never published) with leader was formed on 19 July 1985 and was tasked with solving the problem for both the short and long term. This unofficial team is essentially nonexistent at this time. In my opinion, the team must be officially given the responsibility and the authority to execute the work that needs to be done on a non-interference basis (full time assignment until completed).

R. K. Lund 31 July 1985

It is my honest and very real fear that if we do not take immediate action to dedicate a team to solve the problem with the field joint having the number one priority, then we stand in jeopardy of losing a flight along with all the launch pad facilities.

R. M. Boisjoly
Concurred by:

J. R. Kapp, Manager
Applied Mechanics

COMPANY PRIVATE

Exhibit 4

Bob Ebeling's October 1, 1985 memo (MTE)

MORTON THIOKOL INC. COMPANY PRIVATE

Wasatch Division
Interoffice Memo

1 October 1985
E150/RVE-86-47

TO: A. J. McDonald, Director
Solid Rocket Motor Project

FROM: Manager, SRM Ignition System, Final Assembly, Special Projects and Ground Test

CC: B. McDougall, B. Russell, J. McCluskey, D. Cooper, J. Kilminster, B. Brinton, T. O'Grady, B. MacBeth, J. Sutton, J. Elwell, I. Adams, F. Call, J. Lamere, P. Rose, D. Fullmer, E. Bailey, D. Smith, L. Bailey, B. Kuchek, Q. Eskelsen, P. Petty, J. McCall

SUBJECT: Weekly Activity Report
1 October 1985

EXECUTIVE SUMMARY

HELP! The seal task force is constantly being delayed by every possible means. People are quoting policy and systems without work-around. MSFC is correct in stating that we do not know how to run a development program.

GROUND TEST

1. The two (2) GTM center segments were received at T-24 last week. Optical measurements are being taken. Significant work has to be done to clean up the joints. It should be noted that when necessary SICBM takes priority.
2. The DM-6 test report less composite section was released last week.

ELECTRICAL

As a result of the latest engineering analysis of the Y-1 case it appears that high stress risers to the case are created by the phenolic DFI housing and fairing. As it presently stands, these will probably have to be modified or removed and if removed will have to be replaced. This could have an impact on the launch schedule.

FINAL ASSEMBLY

One SRM 25 and two SRM 26 segments along with two SRM 24 exit cones were completed during this period. Only three segments are presently in work. Availability of igniter components, nozzles and systems tunnel tooling are the present constraining factors in the final assembly area.

IGNITION SYSTEM

1. Engineering is currently rewriting igniter gask-o-seal coating requirements to allow minor flaws and scratches. Bare metal areas will be coated with a thin film of HD-2 grease. Approval is expected within the week.
2. Safe and Arm Device component deliveries is beginning to cause concern. There are five S&A's at KSC on the shelf. Procurement, Program Office representatives visited Consolidated Controls to discuss accelerating scheduled deliveries. CCC has promised 10 A&M's and 30 B-B's no later than 31 October 1985.

O-RINGS AND PUTTY

1. The short stack finally went together after repeated attempts, but one of the o-rings was cut. Efforts to separate the joint were stopped because some do not think they will work. Engineering is designing tools to separate the pieces. The prints should be released tomorrow.
2. The inert segments are at T-24 and are undergoing inspection.
3. The hot flow test rig is in design, which is proving to be difficult. Engineering is planning release of these prints Wednesday or Thursday.
4. Various potential filler materials are on order such as carbon, graphite, quartz, and silica fiber braids; and different putties. They will all be tried in how flow tests and full scale assembly tests.
5. The allegiance to the o-ring investigation task force is very limited to a group of engineers numbering 8-10. Our assigned people in manufacturing and quality have the desire, but are encumbered with other significant work. Others in manufacturing, quality, procurement who are not involved directly, but whose help we need, are generating plenty of resistance. We're creating more instructional paper than engineering data. We wish we could get action by verbal request but such is not the case. This is a red flag.

R. V. Ebeling

Exhibit 5

1979 NASA memorandum questioning the "design adequacy" of the Thiokol Rocket Booster O-ring Seal Joints

National Aeronautics and
Space Administration

NASA

George C. Marshall Space Flight Center
Marshall Space Flight Center, Alabama
35812

EP25 (79–13) January 14, 1979

TO: EE51/Mr. Eudy

FROM: EP25/Mr. Miller

SUBJECT: Evaluation of SRM Clevis Joint Behavior

As requested by your memorandum, EE51 (79-10), Thiokol documents TWR-12019 and letter 7000/ED-78-484 have been reevaluated. We find the Thiokol position regarding design adequacy of the clevis joint to be completely unacceptable for the following reasons:

a. The large sealing surface gap created by excessive tang/clevis relative movement causes the primary O-ring seal to extrude into the gap, forcing the seal to function in a way which violates industry and Government O-ring application practices.

b. Excessive tang/clevis movement as explained above also allows the secondary O-ring seal to become completely disengaged from its sealing surface on the tang.

c. Contract End Item Specification, CPW1-2500D, page I-28, paragraph 3.2.1.2 requires that the integrity of all high pressure case seals be verifiable; the clevis joint secondary O-ring seal has been verified by tests to be unsatisfactory.

Questions or comments concerning this memorandum should be referred to
Mr. William L. Ray, 3-0459.

John Q. Miller
Chief, Solid Motor Branch

cc:
SA41/Messrs. Hardy/Rice
EE51/Mr. Uptagrafft
EH02/Mr. Key
EP01/Mr. McCool
EP42/Mr. Bianca
EP21/Mr. Lombardo
EP25/Mr. Powers
EP25/Mr. Ray

Exhibit 6-A
Flight readiness assessments for shuttle flight #16 ("STS 51-E")
(A Level 3 review—February 8, 1985

FLIGHT READINESS ASSESSMENT FOR STS-51E

- 0 EVALUATION SUMMARY
  - 0 STS-51C PRIMARY O-RING EROSION ON TWO FIELD JOINTS
  - 0 STS-51C SOOT BETWEEN PRIMARY AND SECONDARY O-RINGS ON BOTH FIELD JOINTS—FIRST TIME OBSERVED ON FIELD JOINT
  - 0 EVIDENCE OF HEAT AFFECT ON SECONDARY O-RING OF A68 (RIGHT HAND) CENTER FIELD JOINT BUT NO EROSION — FIRST TIME HEAT AFFECT ON SECONDARY
- 0 CONCLUSION
  - 0 STS-51C CONSISTENT WITH EROSION DATA BASE
    - 0 LOW TEMPERATURE ENHANCED PROBABILITY – STS-51C EXPERIENCED WORST CASE TEMPERATURE CHANGE IN FLORIDA HISTORY
    - 0 EROSION IN TWO JOINTS OBSERVED BEFORE – STS-11 AND 14
  - 0 STS-51E COULD EXHIBIT SAME BEHAVIOR
  - 0 CONDITION IS ACCEPTABLE
- 0 STS-51E FIELD JOINTS ARE ACCEPTABLE FOR FLIGHT

3-17

[redacted], A Subsidiary of
MORTON THIOKOL, INC.
Wasatch Division
[redacted]

Exhibit 6-B
Flight readiness assessment for shuttle flight # 16 ("STS 51-E")
(B) Level 2 review—February 12, 1985

FLIGHT READINESS ASSESSMENT FOR STS-51E

- 0 CONCERN
  - 0 STS-51C PRIMARY O-RING EROSION ON TWO FIELD JOINTS
  - 0 STS-51C SOOT BETWEEN PRIMARY AND SECONDARY O-RINGS ON BOTH FIELD JOINTS—FIRST TIME OBSERVED ON FIELD JOINT
  - 0 EVIDENCE OF HEAT AFFECT ON SECONDARY O-RING OF A68 (RIGHT HAND) CENTER FIELD JOINT BUT NO EROSION
- 0 CONCLUSION
  - 0 STS-51E COULD EXHIBIT SAME BEHAVIOR
  - 0 CONDITION IS NOT DESIRABLE BUT IS ACCEPTABLE

Exhibit 6-C
Flight readiness assessment for shuttle flight # 16 ("STS 51-E")
(C) Level 1 review—February 21, 1985

Level 1 (February 21, 1985)

PROBLEM SUMMARY

PROBLEM	CONCERN	RESOLUTION
0 EVIDENCE OF HOT GAS PAST 0 PRIMARY O-RINGS ON 2 CASE 0 JOINTS (PREVIOUSLY OBSERVED 0 ON NOZZLE JOINTS)	MISSION SAFETY	ACCEPTABLE RISK BECAUSE OF LIMITED EXPOSURE AND REDUNDANCY (REF STS 41-C FRR)

Exhibit 7
Morton Thiokol presentation to NASA HQ on SRM seal erosion problems
Final conclusions and recommendations charts (August 19, 1985)

General Conclusions

- All O-ring erosion has occurred where gas paths in the vacuum putty are formed
- Gas paths in the vacuum putty can occur during assembly, leak check, or during motor pressurization
- Improved filler materials or layup configurations which still allow a valid lead check of the primary O-rings may reduce frequency of O-ring erosion but will probably not eliminate it or reduce the severity of erosion
- Elimination of vacuum putty in a tighter joint area will eliminate O-ring erosion if circumferential flow is not present - if it is present, some baffle arrangement may be required
- Erosion in the nozzle joint is more severe due to eccentricity; however, the secondary seal in the nozzle will seal and will not erode through
- The primary O-ring in the field joint should not erode through but if it leaks due to erosion or lack of sealing the secondary seal may not seal the motor
- The igniter Gask-O-Seal design is adequate providing proper quality inspections are made to eliminate overfill conditions

Recommendations

- The lack of a good secondary seal in the field joint is most critical and ways to reduce joint rotation should be incorporated as soon as possible to reduce criticality
- The flow conditions in the joint areas during ignition and motor operation need to be established through cold flow modeling to eliminate O-ring erosion
- QM-5 static test should be used to qualify a second source of the only flight certified joint filler material (asbestos-filled vacuum putty) to protect the flight program schedule
- VLS-1 should use the only flight certified joint filler material (Randolph asbestos-filled vacuum putty) in all joints
- Additional hot and cold subscale tests need to be conducted to improve analytical modeling of O-ring erosion problem and for establishing margins of safety for eroded O-rings
- Analysis of existing data indicates that it is safe to continue flying existing design as long as all joints are leak checked with a 200 psig stabilization pressure, are free of contamination in the seal areas and meet O-ring squeeze requirements
- Efforts need to continue at an accelerated pace to eliminate SRM seal erosion

Exhibit 8

NASA's matrix organizational structure: launch (program) and institutional chains of command (© *1992 Mark Maier. Used by permission*)

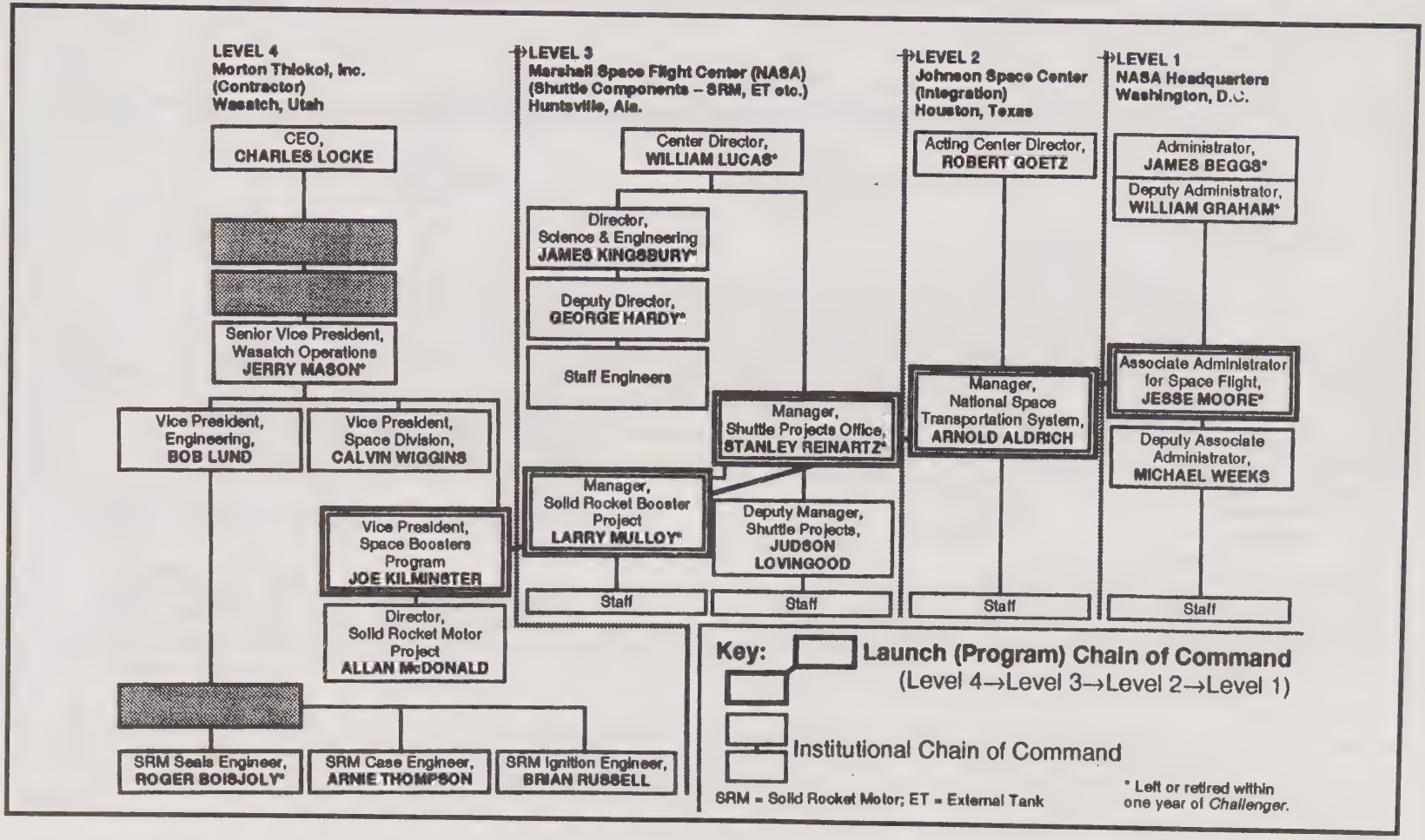
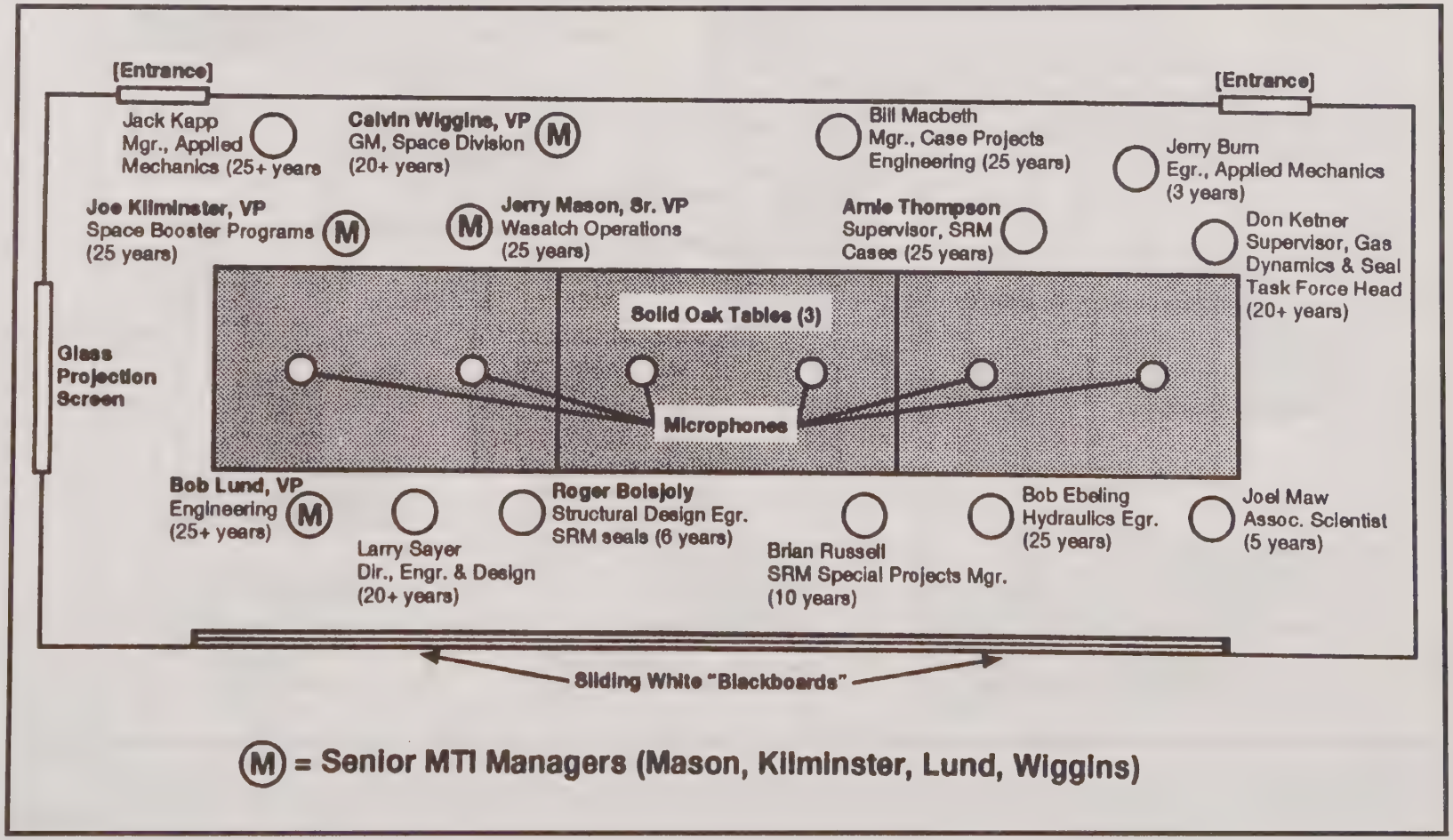


Exhibit 9

The Management Information Center ("MIC") room, Morton Thiokol, Inc., Wasatch Division, Utah. *Challenger* telecon participants, January 27, 1986. *(Source: Roger Boisjoly, 1989. © 1989, Mark Maier. Used by permission)*



Case B

The Presidential Investigation

Deception and Disclosure

Within days of the disaster, President Reagan, upon the advice of his Chief of Staff, Donald Regan, decided to appoint a blue-ribbon panel to "review the circumstances surrounding the accident to determine [its] probable cause" and to "develop recommendations for corrective or other action based upon the Committee's findings and determinations." Donald Regan's friend and political mentor, former Secretary of State William P. Rogers, was selected to chair the Commission; former astronaut Neil A. Armstrong was designated vice chair.

From the very start, NASA made efforts to divert attention away from the field joint and the temperature issue, even though within 24 hours of the disaster they had high-speed films of the lift-off which clearly indicated a booster malfunction. Top officials issued stern denials of any awareness of potential problems which could have caused the disaster. For example, William Graham (the Deputy Administrator of NASA) publicly announced at a press conference on the day following the tragedy: "There is nothing in our history that could account for something like this."[1]

During the same press conference, in response to a direct query whether Rockwell had opposed the launch, Jesse Moore, the Associate Administrator for Space Flight, flatly declared: "The technical team *did* sit down—all the NASA people involved as well as the contract people involved—and did feel that the conditions at the launch pad *were* acceptable for launch and basically recommended that—you know—we *launch*."[2] (William Lucas, for his part, would eventually argue, "I have never considered the seals, however, a safety of flight issue."[3] George Hardy, when pressed on the matter, would concede that "at some point, the coldness of the weather makes a difference on the risk" but qualified it with the disclaimer, "I think that would be somewhere in the minus 40°, minus 50°F range."[4]

During the January 29 conference, Dick Smith, the Director of the Kennedy Space Center (KSC), announced that as a result of their review of the films, "We do not have any specific areas [as potential causes] at this time. We made a cursory look, did we see anything anomalous with any of the hardware that comes off [the launch pad] at T-0 [lift-off] yesterday afternoon? That showed nothing."[5] As Roger Boisjoly noted.[6]

> NASA management was diligently attempting to shape the investigation and find something other than low temperature that caused the disaster. And it was really a terrible scene from that standpoint. NASA knew about the black puff of smoke the next day, and knew for sure that the joint had leaked on ignition because it was witnessed by that black puff of

> smoke on film. And yet we, who were on the [Failure Investigation] Team, were not told about it. They were chasing us down blind alley after blind alley, trying to find something other than low temperature so they could blame that disaster on it.

Troubled by such misrepresentations, on February 8, 1986, Richard Cook drafted a letter to his superior in NASA's budget office to document that headquarters had been aware of the problems that had led to the explosion and already suspected what the specific cause was: "There is a growing consensus that the cause of the *Challenger* explosion was a burn-through in a Solid Rocket Booster at or near a field joint," adding "that if such a burn-through occurred, it was probably preventable and that for well over a year the Solid Rocket Boosters have been flying in an unsafe condition."

The NASA officials repeated their misleading assertions before the Presidential Commission in its first session on Thursday, February 6th. Concerned that top Agency officials were concealing the truth from the Commission, Richard Cook—armed with his memos which irrefutably pointed to high-level awareness of the long-standing O-ring issue—contacted the Commission and asked whether people who brought "unflattering" information about the Agency to light would be subjected to retribution.

"I was told by the Commission representative I talked to, 'Don't worry. NASA is going to be pretty much protected in all of this.'"[7] It was then that Cook surmised that the Commission might have been put in place to shield top Agency officials—and perhaps even the President—from responsibility or blame. He leaked his information to *The New York Times*, providing the public its first glimpse of what had actually gone wrong.[8] The Commission met in Executive (closed) Session on Monday, February 10, during which Chairman Rogers spent a considerable amount of time "coaching" NASA's top shuttle official, Jesse Moore, on how to respond to his questions the next day, during the first public session. (This session was arranged largely to respond to the revelations made in *The New York Times*, which Rogers regarded as having "created an unpleasant, unfortunate situation."[9])

Rogers advised Moore: "Everybody recognizes that you are going to make mistakes in judgment, but at least we have to show that it wasn't done in a careless fashion, and that there were meetings, and you thought about it. . . . It seems to me that somebody should deal with it in chronological order and say, 'Yes, we had these problems; here's what we did; . . . we made these decisions and here is why we made them.' Somebody has to say that."[10]

It was during this session that Thiokol's original no-launch recommendation also first came to light. The Commission was meeting in Room 476 of the Old Executive Office Building in Washington, a hot, stuffy hearing room—and listened patiently as Lovingood and Mulloy briefed them on the joint configuration and the events which transpired the day before the launch. Lovingood, who indicated that people at Marshall sometimes preferred to refer to the O-ring anomalies as "observations,"[11] testified, "We have never seen any erosion of a secondary seal. . . ,"[12] and—referring to the evening telecon—reported, "We had a meeting where there was some

concern about the cold temperatures" and—omitting any reference to his own reservations about the launch—added, "Thiokol recommended to proceed on the launch, and so they did recommend the launch."[15]

Similarly, Larry Mulloy (who had been charged with briefing the Commission on the technical aspects of the rocket boosters), made no reference to the original recommendation either. Instead, Mulloy flatly explained:[14]

> Thiokol . . . wanted to point out that we would be outside that experience base (53°). . . . After hearing the discussion, we all concluded that there was no problem with the predicted temperatures for the solid rocket motor. And I received a document from the SRM project manager at Thiokol [Kilminster] to the effect that there was no adverse consequence expected for the temperatures on the night of the 27th. The data that was presented [in the telecon], it was the judgment that under the conditions that we would see on launch day, given the configuration that we were in, that the seal would function at that temperature. That was the final judgment.

Just as Chairman Rogers was about to adjourn the session, Al McDonald—who had been sitting quietly behind Larry Mulloy all this time—tapped Mulloy on the shoulder and whispered that he had something to add. Mulloy motioned to Rogers and exclaimed, "Excuse me, Mr. Chairman, but I believe that Al McDonald of Thiokol wanted to make another point."[15] It evidently had become clear to the Thiokol manager that no one from Marshall was about to volunteer any details about the evening telecon. So he dropped his bombshell: Thiokol had originally recommended not launching below 53°. Rogers was incredulous: "Could you stand up and say that again a little louder so we can all hear it? I'm not sure we all understood."[16] And, again, a few disbelieving minutes later: "I'm not sure I understand: Am I hearing you say that you had a meeting and you initially recommended against the launch?"[17] Aldrich reportedly was equally stunned, and told the Commission, "Sir, I am hearing this for the first time!"

Reeling from the double-barrelled revelations in the Sunday *Times* and McDonald's testimony, the Commission had no choice but to seriously address the organizational and decisional forces which had contributed to the launch decision, moving away from its preferred narrow focus on the *technical* cause of the disaster. The reaction, according to Commissioner Hotz, was, "Oh, Shit! This is going to be worse than we thought. Now we're going to have to address the management issue."[18] In the meantime, a two-member Commission delegation had also met with Roger Boisjoly and other MTI and NASA engineers at the Marshall Space Flight Center. During that session, Boisjoly presented the delegation with reams of material (memos, activity reports, notebooks) which documented MTI's awareness of the O-ring problem. He was told by the representative he gave the materials to (General Donald Kutyna), that if he had not handed in that packet, the Commission "would have *never* looked at the organizational misconduct or

the organizational structure at either NASA or Morton Thiokol because their focus was on determining the *technical* cause of the disaster."[19]

For his part, Cook was hauled (unexpectedly) before the Commission on the first day of public testimony, where he heard his credibility impugned by his supervisors. Michael Weeks, the Deputy Administrator of Space Flight (see Exhibit 8 in part A of this case), for example, attempted to defuse the significance of Cook's claims by arguing that he was "a financial type person and not too knowledgeable of the whole program situation,"[20] adding, "I guess I would suggest to you that this is less a clinical analysis of this whole situation, because the young chap came aboard about the 1st of July and was just picking up things in a hallway and wrote this to his immediate superior."[21] Only upon intense questioning by Commissioner Hotz did Weeks finally concede that Cook's assessment—prepared at the behest of his superior—was substantially accurate,[22] Cook was also subjected to a hostile line of questioning from Chairman Rogers, who took him to task for drawing conclusions outside his area of expertise ("You weren't qualified to do that [make safety judgments], were you?"), even though Cook had only paraphrased what the HQ engineers themselves had told him and was a highly experienced program analyst who had been assessing technical problems for various federal agencies since 1970.

In the end, however, the testimony cited above, in addition to Roger Boisjoly's revelations and his outspoken testimony about the events surrounding the evening telecon (despite explicit instructions from company lawyers to answer all questions "Yes" or "No" and to "volunteer nothing,"[23]) led the Commission to acknowledge—and fault—the flawed decision-making process which contributed to the *Challenger* disaster. Most of the Commission's ire, however, was directed at NASA'S middle-level management, and not at top officials. (A summary of the Commission's findings and recommendations is provided in Appendices A and B, available from your instructor.)

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Case C

Epilogue

NASA and Morton Thiokol after *Challenger*

Shortly after the disaster, Jesse Moore, Arnold Aldrich, Stanley Reinartz, Larry Mulloy, Bill Lucas, Judson Lovingood, and George Hardy all left their positions at NASA. Glen Eudy became manager of the Shuttle-C task force team at Marshall. Ben Powers became technical assistant to the Chief Engineer in the Advanced Solid Rocket Motor Project Office.

Richard Cook left NASA within 3 weeks to work for the U.S. Department of Treasury, a position he had applied for well before the disaster, and whose offer he reassured himself "was firm, before I began to go public with this stuff."[1] His leak to *The New York Times*, and his testimony before the Presidential Commission helped reveal NASA's awareness of the threat to flight safety posed by the O-ring joint design, contrary to the impression that was being fostered by Agency officials in the early days of the investigation.

Jerry Mason retired involuntarily from Morton Thiokol within 6 months. Calvin Wiggins was transferred to become Senior Vice President and General Manager of the Huntsville Division. Joe Kilminster headed up Thiokol's auto airbag division, and subsequently retired. Bob Lund was promoted to Vice President of Advanced Programs and Technology (Salt, Household Products, Airbags) at the Corporate Offices of Morton, International; Al McDonald was promoted to Vice President of Advanced Programs and Technology and became Vice President and Senior Staff to Space Operations at the Wasatch Division in Utah. Arnie Thompson became Manager of Manufacturing and Final Assembly on the Shuttle Boosters; Brian Russell, Manager for the Booster Igniters program. Bob Ebeling retired within 1 year of the disaster. Roger Boisjoly was ostracized within MTI for his outspoken testimony before the Presidential Commission and was subsequently placed on medical disability leave, which expired in January 1989.

As part of a therapeutic effort to overcome his feelings of guilt that "maybe there was something more I should have done," Boisjoly spent two years traveling around the country delivering over 50 lectures on the disaster, mainly to college audiences, for which he generally received no personal compensation beyond expenses. "Despite all it cost me—my house in Utah, my chance to retire from Morton Thiokol, my career—I wouldn't change a thing, because I know I did the right thing and I can sleep with a clear conscience at night. I've turned a national and personal tragedy into something from which good things might result, if it prevents—or at least reduces—unethical decision-making practices in organizations. It gives me a sense of having accomplished something worthwhile by having students start their careers thinking In the right direction."[2] Boisjoly became a fully licensed professional engineer with a thriving private consulting practice in Arizona. He is frequently called upon in liability cases to testify as an expert

witness. In 1988, he was awarded a Scientific Freedom and Responsibility Award from the American Association for the Advancement of Science for "his exemplary and repeated efforts to fulfill his professional responsibilities as an engineer by alerting others to the life-threatening design problems on the *Challenger* space shuttle and for steadfastly recommending against the launch of January 1986."

For their combined roles in bringing the truth behind the *Challenger* disaster to light, regardless of the personal risk and costs incurred, on June 27, 1990, Roger Boisjoly and Richard Cook were awarded a $10,000 Cavallo Foundation Prize for Moral Courage in Business and Government for their promotion of ethics and social responsibility.

NASA's Return to Flight

The Shuttle Program, with significant modifications in its management structure and numerous personnel changes, returned to flight on September 29th, 1986, with the launch of the *Discovery*. (The troublesome joint was redesigned to incorporate a third O-ring and a capture feature to keep the joint from flexing open.) As an added precaution, NASA and Thiokol installed heaters around the field joints to keep the O-ring temperature at 90°F. "We've never had a heater fail," McDonald noted in 1992,[3] "but if one did, the lower level launch Commit Criteria that has been set for the field joint is 70°." (Even with functional heaters, a launch is authorized only at 35° or above.)

On May 7, 1992, *Challenger*'s replacement shuttle, the *Endeavor*, flew its first mission—the forty-ninth of the Shuttle Program. Allan McDonald (the director of the solid rocket motor program at MTI when *Challenger* occurred) noted in 1992:[4]

> We've had twenty-four consecutive flights with no indication of anything close to any kind of a problem. In fact, we've [MTI] had the cleanest hardware of all the shuttle hardware in all of those twenty-four flights. We're doing an extremely high quality job, and we're doing it with less money than we did two years ago. These people are extremely motivated: They came from what I consider to be the bottom of the canyon to the top of the mountain.

In recognition of Thiokol's apparent turnaround, NASA in 1991 awarded the contractor its George M. Low Trophy for Excellence in Quality and Productivity, the highest honor bestowed on a contractor. In 1992, Thiokol received the NASA Flight Safety Award from the Astronauts' Office, for having the highest safety and reliability in the shuttle program. In 1993, the contractor was nominated by the Federal Environmental Protection Agency for a United Nations Environmental Protection Award—an award it won for its progress in reducing ozone-depleting compounds.[5]

"Two Steps Forward, One Step Back?"

In December of 1993, however, *The New York Times*—citing internal NASA reports obtained under the Freedom of Information Act and disturbing allegations by a 30-year solid-fuel rocket expert from the Aerojet Solid Propulsion Company—disclosed that the shuttle's twin boosters had "repeatedly" shown an "alarming" and "subtle trend of rising [and unusual] imbalances" in the amount of their thrust output.[6] The momentary power imbalance between the two boosters may seem relatively minor (51,000 pounds out of 2.5 million pounds of overall thrust), but the *Times* emphasized that if these so-called "pressure spikes"—first detected by sensors on an April 1993 flight—increased in magnitude, "a shuttle could be torn apart during its fiery ascent."[7] (NASA puts the overall risk of a catastrophic failure at about 1 in 78.) Although the precise source of the problem had yet to be determined, the Space Agency's investigations indicated that "[t]he worst-case safety aspect of this failure" could result in the loss of "crew and vehicle." According to the *Times*, "NASA officials deny any danger. . . . Even the worst foreseeable spike, they say, would be well within the protective limits set for the shuttle. But that assertion was made after NASA lowered the safety margins earlier this year in order to keep the shuttles flying."[8]

Frank Jordan, a veteran designer of solid-fuel rocket boosters at Aerojet—the company selected by NASA to design an improved rocket booster (advanced solid rocket motor) but whose contract was canceled by Congress in the Fall of 1993 due to delays and cost overruns—argues that NASA has "no way of knowing what the upper limit of that spike is going to be. . . . [The spikes] could get as much as three times worse." (As the ASRM project's chief ballistician, Jordan monitored and evaluated the troubles with the current booster, in accordance with his company's mandate.)

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Appendix A

Challenger: The Path to Disaster
Key Findings from the Rogers Commission Report[1]

"The Contributing Cause of the Accident"

The Presidential Commission, which according to all reports (for example, Roger Boisjoly in a videotaped interview with Mark Maier, Richard Cook in lectures given at SUNY—Binghamton and a videotaped 1991 interview, Commission member Robert Hotz in a 1990 interview, and Thiokol's Allan McDonald in a 1992 interview) had hoped to focus its investigation on just the technical cause of the accident, ended up addressing the management and decision-making processes, primarily due to information which was volunteered by Cook, Boisjoly, or McDonald. The Commission's final report flatly asserted that the decision to launch the *Challenger* was flawed (page 82), and identified it as a contributing cause of the accident. As the Commission explained:

> There was a serious flaw in the decision making process leading up to the launch of flight 51-L [*Challenger*]. A well structured and managed system emphasizing safety would have flagged the rising doubts about the Solid Pocket Booster joint seal. Had these matters been clearly stated and emphasized in the flight readiness process in terms of reflecting the views of most of the Thiokol engineers and at least some of the Marshall engineers, it seems likely that the launch of 51-L might not have occurred when it did. (page 104)

The Commission also opined that the waiving of launch constraints "appears to have been at the expense of flight safety," (page 104) and noted that there was no system to ensure that such constraints (and their waivers) be considered by all levels of management. The report further indicated that:

- The Commission is troubled by what appears to be a propensity of management at Marshall to contain potentially serious problems and to attempt to resolve them internally rather than communicate them forward.
- The Commission concluded that Thiokol Management reversed its position and recommended the launch of 51-L, at the urging of

> Marshall and contrary to the views of its engineers in order to accommodate a major customer. (page 104)

In a direct reference to Rockwell's objections to launch, the report further explains:

> The Commission is not convinced Levels 1 and 2 appropriately considered Rockwell's concern about ice. However ambiguous Rockwell's position was, it is clear that they did tell NASA that the ice was an unknown condition. . . . The Commission finds the decision to launch questionable under those circumstances. In this situation, NASA appeared to be requiring a contractor to prove that it was not safe to launch, rather than proving it was safe. (pages 117–118)

"Human Factors Analysis"

In a separate "Human Factors Analysis" prepared for the Commission (Rogers, 1986, Appendix G), "excessive" work involvement was also implicated as 'one factor which may have contributed significantly to the atmosphere of the teleconference" (page G–5). As the Commission's investigations revealed:

> "Certain key managers (including Hardy and Mulloy) obtained only minimal sleep the night before the teleconference or had arisen so early in the morning that they had been awake and on duty for extended periods. . . . [T]he willingness of NASA employees to work excessive hours, while admirable, raises serious questions when it jeopardizes job performance, particularly when critical management decisions are at stake" (Appendix G, page 5).

"An Accident Rooted in History"

In observing that this was "an accident rooted in history," the Rogers Commission concluded that:

> The genesis of the *Challenger* accident—the failure of the joint of the right Solid Rocket Motor—began with decisions made in the design of the joint and in the failure by both Thiokol and NASA's Solid Rocket Booster project office [at Marshall SFC] to understand and respond to facts obtained during testing.
>
> The Commission has concluded that neither Thiokol nor NASA responded adequately to internal warnings about the faulty seal design. Furthermore, Thiokol and NASA did not make a timely attempt to develop and verify a new seal after the initial design was shown to be deficient. Neither organization developed a solution to the unexpected occurrences of O-ring erosion and blow-by even though this problem was experienced frequently during the Shuttle flight history. Instead, Thiokol and NASA management came to accept erosion and blow-by as unavoidable and as an acceptable flight risk. (page 148)

Specifically, the Commission determined that NASA and Thiokol accepted escalating risk apparently "because they got away with it last time" (page

148). According to Presidential Commissioner Richard Feynman (a Nobel Prize-winning physicist), the decision-making process was

> a kind of Russian Roulette. When I look at these [flight readiness] reviews, I find a perpetual movement heading for trouble. [The Shuttle] flies [with O-ring erosion] and nothing happens. Then it is suggested, therefore, that the risk is no longer so high for the next flights. We can lower our standards a little bit because "we got away with it last time. And an argument is always given that "Last time, it worked." It was a risk. You got away with it, but it shouldn't be done over and over again like that. (page 2469)

Noting further that the O-ring erosion history presented to Level 1 at NASA Headquarters in August of 1985 was sufficiently detailed to require corrective action before the next flight (page 148), the Commission assailed NASA's system for tracking anomalies for Flight Readiness Reviews. According to the Commission, that system failed in that

> despite a history of persistent O-ring erosion and blow-by, flight was still permitted. It failed again in the strange sequence of six consecutive waivers prior to 51-L, permitting it to fly without any record of a waiver, or even of an explicit constraint. Tracking and continuing only anomalies that are outside the data base of prior flight allowed major problems to be removed from, and lost by, the reporting system. (page 148)

Differences between organizational levels on the perception of risk exacerbated the problem. During the investigation, Commissioner Feynman discovered that the working level engineers estimated the odds of a *Challenger*-type disaster at roughly 1 in 100, while their managers assessed it at 1 in 100,000 (or roughly 1 disaster every 2,000 years, launching a shuttle per week). In an appendix to the Commission's report, Feynman suggested that NASA management may have wanted "to assure the government of NASA perfection and success in order to ensure the supply of funds" (Appendix F, page 5). In any event, he noted, this perceptual gulf demonstrated "an almost incredible lack of communication between [NASA management] and their working engineers" (Appendix F, page 5).

"The Silent Safety Program"

In chastising the Space Agency's Silent Safety Program, the Commission concluded that "the unrelenting pressure to meet the demands of an accelerating flight schedule might have been adequately handled by NASA if it had insisted upon the exactingly thorough procedures that were its hallmark during the Apollo Program" (page 152). Noting that between the Apollo years and 1986, NASA's Safety, Reliability, and Quality Assurance functions became ineffective, the Commission found four communication failures which directly affected the *Challenger* launch decision:

- A lack of problem reporting requirements

- Inadequate trend analysis
- Misrepresentation of "Criticality"
- Lack of involvement [e.g., by the astronauts] in critical discussions (page 152)

"Pressures on the System"

Finally, the Commission identified several "Pressures on the System," which shaped the context in which the final launch decision was made. Chief among these were "the planned acceleration of the Space Shuttle launch schedule" (page 164) and the underlying presumption that the system was "operational." As the Commission observed, from its very inception, NASA had been "advertising" the Shuttle, as "a vehicle that would make space operations 'routine and economical.' The greater the annual number of flights, the greater the degree of routinization and economy, so heavy emphasis was placed on the schedule" (page 164). As the Commission stressed (page 164):

> One early plan contemplated an eventual rate of a mission a week, but realism forced several downward revisions. In 1985, NASA published a projection calling for an annual rate of 24 flights by 1990. Long before the *Challenger* accident, however, it was becoming obvious that even the modified goal of two flights a month was overambitious.
>
> In establishing the schedule, NASA had not provided adequate resources for its attainment. As a result, the capabilities of the system . . . were strained to the limit, strained by the flight rate itself and by the constant changes it was forced to respond to within that accelerating flight schedule.

In their determination to prove that the system was "operational," NASA managers, according to the Rogers report, "may have forgotten—partly because of past success, partly because of their own well-nurtured image of the program—that the Shuttle was still in a research and development phase" (page 165). Their desire to increase the flight rate, their reluctance to relax the optimistic schedule, and their attempt to assume "an operational status" all contributed to a climate in which "customer requirements [i.e., launching a certain number of payloads each year and launching them on time] . . . may occasionally have obscured engineering considerations" (page 165).

"Another obstacle in the path toward accommodation of a higher flight rate," the Commission pointed out, was NASA's "legendary 'can-do' attitude" (page 171). The Commission cautioned that "NASA's attitude historically has reflected the position that 'We can do anything,' and while that may essentially be true, NASA's optimism must be tempered by the realization that it cannot do everything (page 172). Or, as Commissioner Feynman observed in his famous addendum to the Rogers report, "For a successful technology, reality must take precedence over public relations, for nature cannot be fooled" (Appendix F, page 5).

Appendix B

The Rogers Commission Report: Key Recommendations Pertaining to the Organizational and Management Structure[2]

Shuttle Management Structure

The Shuttle Program Structure should be reviewed. The project managers for the various elements of the Shuttle program felt more accountable to their center management than to the Shuttle program organization. Shuttle element funding, work package definition, and vital program information frequently bypass[ed] the National STS (Shuttle) Program Manager.

A redefinition of the Program Manager's responsibility is essential. This redefinition should give the Program Manager the requisite authority for all ongoing STS operations. Program funding and all Shuttle Program work at the centers should be placed clearly under the Program Manager's authority.

Astronauts in Management

The Commission observes that there appears to be a departure from the philosophy of the 1960s and 1970s relating to the use of astronauts in management positions. These individuals brought to their positions flight experience and a keen appreciation of operational and flight safety.

- NASA should encourage the transition of qualified astronauts into agency management positions.
- The function of the Flight Crew Operations director should be elevated in the NASA organization structure.

Shuttle Safety Panel

NASA should establish an STS Safety Advisory Panel reporting to the STS Program Manager. The charter of this panel should include Shuttle operational issues, launch commit criteria, flight rules, flight readiness and risk management. The panel should include representation from the safety organization, mission operations, and the astronaut office.

Safety Organization

NASA should establish an Office of Safety, Reliability and Quality Assurance to be headed by an Associate Administrator, reporting directly to the NASA Administrator. It would have direct authority for safety, reliability, and quality assurance throughout the agency. The office should be assigned the

workforce to ensure adequate oversight of its functions and should be independent of other NASA functional and program responsibilities.

The responsibilities of this office should include:

- The safety, reliability and quality assurance functions as they relate to all NASA activities and programs.
- Direction of reporting and documentation of problems, problem resolution and trends associated with flight safety.

Improved Communications

The Commission found that Marshall Space Flight Center project managers, because of a tendency at Marshall to management isolation, failed to provide full and timely information bearing on the safety of flight 51-L (*Challenger*) to other vital elements of Shuttle program management

- NASA should take energetic steps to eliminate this tendency at Marshall Space Flight Center, whether by changes in personnel, organization, indoctrination or all three.
- A policy should be developed which governs the imposition and removal of Shuttle launch constraints.
- Flight Readiness Reviews and Mission Management Team meetings should be recorded.
- The flight crew commander, or a designated representative, should attend the Flight Readiness Review, participate in acceptance of the vehicle for flight, and certify that the crew is properly prepared for flight.

Flight Rate

The nation's reliance on the Shuttle as its principal space launch capability created a relentless pressure on NASA to increase the flight rate. Such reliance on a single launch capability should be avoided in the future.

NASA must establish a flight rate that is consistent with its resources. A firm payload assignment policy should be established. The policy should include rigorous controls on cargo manifest changes to limit the pressures such changes exert on schedules and crew training. [To please its commercial customers, NASA frequently accepted last-minute changes to established payloads, requiring significant retraining of the crew and extensive overtime by ground support personnel.]

Additional Recommendations

Additional recommendations covered changes in the Rocket Booster Design (I), Criticality Review and Hazard Analysis (III), Landing Safety (VI), Launch Abort and Crew Escape options (VII), and Maintenance Safeguards (IX).

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Notes

1. All page references in this appendix refer to W. Rogers, Report of the Presidential Commission on the Space Shuttle *Challenger* Accident, Washington, D.C., U.S. Government Printing Office, 1986.

2. The material in this appendix is excerpted from pages 198 to 201 of the Rogers Commission Report.

6

Challenger Case Questions

Instructions: Complete this worksheet in preparation for in-class discussion.

1. Identify the apparent values of the following key actors.

Robert Boisjoly _____

_____

_____

_____

William Lucas _____

_____

_____

_____

Larry Mulloy _____

_____

_____

_____

Richard Cook _____

_____

_____

_____

2. What stage of CMD is apparent for the following key actors?

Robert Boisjoly _____

William Lucas _____

Larry Mulloy _____

Richard Cook _____

3. Analyze the launch decision based on each of the following ethical perspectives.

- *formalism:* What human rights were involved? Were the categorical imperatives followed?

- *utilitarianism:* What were the consequences to relevant stakeholders? Did expected benefits exceed costs?

astronauts _____

Thiokol _____

Marshall _____

NASA _____

general public _____

other _____

- *egalitarian justice:* Did the least well off stakeholders benefit more than better-off stakeholders?

- *libertarian justice:* Did every stakeholder participate freely?

7

A Roundtable Discussion on Maintaining Ethics and Values in Foreign Cultures

How can organizations ensure that their employees are managing in an ethical mode when representing their employer abroad? In the following discussion, several thoughtful executives with extensive experience in global business and ethics share their insights on this issue. Among them are:

- *William C. Norris, Founder and Former Chairman of Control Data Corp. of Minneapolis, Minnesota*
- *Shirley V Paterson, Vice-President of Ethics and Business Conduct for Northrop Corporation in Los Angeles*
- *Peter Thigpen of Executive Reserves in Mill Valley, California; Former Senior Vice-President at Levi Strauss & Co.*
- *John J. Ursu, Vice-President of Legal Affairs and General Counsel at 3M Corporation in St. Paul, Minnesota*
- *James O'Toole, Chairman of the Management Department at the Graduate School of Business, University of Southern California*
- *Barbara Levy Toffler, Senior Principal at Resources for Responsible Management in Boston*
- *Graydon R. Wood, Vice-President of Quality and Ethics at NYNEX Corporation, White Plains, New York*

Question: Bribes and "facilitation fees" seem to be accepted business practice in many countries. Is the U.S. Foreign Corrupt Practices Act, which forbids many of these payments by U.S. companies, unrealistic and unfair? Is it ethical for a U.S. company to hire local companies and law firms to make such payments? Is it reasonable for the U.S. company to be ignorant of what its foreign agents do on its behalf?

Mr. Ursu: There is no question that it is often difficult for an American company to compete with foreign companies that do not have such laws, at least over the short term. I think over the long term we're probably not at that great a disadvantage because bribery is not a reliable mode of competition, at least not for a company like 3M. 3M tries to develop unique products that deliver high value. If we were selling sugar or other commodities where there was very little difference in the product, very little difference in the service, I suppose bribery would be a different issue. But we try to outcompete our competitors not based on things like bribery or even price but based on quality and product performance and service. Companies like 3M cannot sustain competition over the long haul on an unethical plane, because there will always be people who are better crooks. We're better engineers, better scientists, and better salespeople.

Facilitating payments can be ethical . . . because I think it's a way of life that's well understood by all the affected parties including the governments themselves. So if you are required, for example, to help fund the prosecutor in a Third World country or the police department in investigating a crime against your company, that is just how the whole government system works there. Bribery, by contrast, has to do with separating out an employee of an organization from the organization itself. When we or any other American company pay a facilitating payment to an employee of a government, we're not putting that employee into a conflict with his government.

Mr. Norris: That's a difficult problem. If you're going to do business in Iran, for example, you're better off to have a local organization you go through. You can own part of it so you can control it. But let them deal with the local customs and don't get directly involved. Because there's just no way of handling that is acceptable, either from a moral standpoint or legal.

Mr. Ayers: That's a very difficult issue. Sometimes it's cultural, sometimes it's not. You can academically construct an argument that distinguishes between bribing a government official to betray a trust, and paying a facilitation fee which is to encourage somebody to do their job more quickly than they might otherwise do it. Our policy is that we don't pay facilitation fees. I might debate that. Is tipping a bribe?

We have to be very careful about ethical imperialism, [thinking] that we have an absolute lock on everything that's right, good, and pure in the world. We don't. I think there are core ethical values, and I think they are universal, but this is a difficult issue. I've worked in Egypt where the customs official probably is paid $25 a month and everybody expects that he will supplement his income by getting tips. [The word] "tip" means "To Insure Promptness." We don't pay facilitation fees, even though the FCPA would permit that. In our mind, the corporate mind, it's the first step down a slippery slope.

It's absolutely essential to know and be accountable for what any agent representing us is doing. Ignorance is absolutely not an excuse. We make our agents and representatives sign statements in their contracts saying that

they've gotten a copy of our standards of conduct and that they will comply. If we detect one that isn't complying, they're terminated.

Dr. Edwards: Many times in our work with companies, they are of the opinion that doing business overseas is much more difficult than doing business in the United States because people who are overseas do not have the same ethical standards that we have, often do not have the same legal requirements that we have and are willing to engage in bribery. Sometimes they get confused when they compare bribery and gift-giving as being just merely different quantifications of the same practice. That is, if it's OK to give a cabby a tip or waiter to get better service, and it's OK to exchange very fine gifts between corporate heads, then it's OK to give larger gifts to buyers and contracting officials [which may] influence their decision to buy from you rather than someone else.

If there is a sliding scale from gift to bribery, business people do well to remember at the far end of the scale, governments fall. Every civilized country on the planet, to my knowledge, has a law forbidding the bribery of public officials. Nobody wants their government bought and paid for. You justify making payments to government officials in order to get into a market and do your business in that market or do business with that government. You are undermining the integrity and viability of that government. You do not have right to do that in order to increase your sales.

There may be some markets into which some companies simply should not go. We had, a few years ago, a consumer products firm that was growing very rapidly every year, and the strategic business plan called for them to double the size of their business in five years, largely by acquisition in the Pacific Rim and in Latin America. They did a risk assessment country by country, and they made a decision that [they would not enter] certain countries in the Pacific Rim [because of] the probability of being involved with companies that were already corrupt. It was not worth the risk to their reputation to try to enter those markets through acquisition. They just plain wrote them off.

The Foreign Corrupt Practices Act is neither unrealistic nor unfair. It does acknowledge the legal acceptability of facilitation payments and does require the facilitation payments be properly recorded in the books and records of the corporation. That seems to me to be very realistic and hardheaded, given the fact that standards do vary around the world.

Dr. Toffler: If you initiate a payment to wield influence to get something sooner or better or above somebody else, that's a bribe. If you're asked to do that to get either special favor or something you feel you're entitled to, you're responding to extortion. Facilitating payments say there are certain things you ought to be getting—like having your raw materials moved in a timely fashion through customs—but may not be. But if you give [custom officials] $50 and record it in your books, that's viewed as a facilitating payment and is allowed. Is it proper or is it not proper? You really can't make a statement

like that. I'll tell you right now, almost every single company is doing one thing or another, through agents or whatever. That is the reality if you're going to do business around this world. Every [company] will tell you that it takes responsibility for what its foreign agents do, but foreign agents are doing a lot of stuff out there.

One of the big problems for American companies is that they send mid-level managers overseas and then [let them] hang out to dry. They say, "Don't make any illegal payments, but don't you dare lose the contract or don't you dare put us in a position where we can't do business there." And the manager doesn't know what to do. They are damned if they do and damned if they don't. [I know an executive who] was heading a company in another country. He was essentially asked by an export official to give a gift and if he did not give the gift he was not going to be able to export this product. He called his boss back home, very, very high level.

The answer he got from back home was don't do anything illegal or to embarrass this company but if you lose our contract back in the States, if you don't get that product out, you're dead meat. Direct quote, "you're dead meat." At responsible companies, the decision is not in the hands of the local manager; instead, the very highest leadership is involved in trying to sort through what the appropriate behavior is. Sometimes when the very highest level gets involved it turns out that things can get done without payments being made. It's a far too complicated problem to give a snappy little answer to.

A bank manager in Hong Kong [said to me] the next place you're going to see a lot of business opening up in is Vietnam. But, he said, you know why nothing's really been done yet? They don't have enough of a bureaucracy in place [yet] to know how to make the payoffs. As soon as they get that in place, it's going to open up like mad. Of course the U.S. will get there much too late. We'll make a lot of noise about how ethical we are. Eventually we'll get in and pay, but by then everybody else will have established themselves, and we'll be also-rans.

It's a very complicated thing. The question is how are you going to manage in that reality. I'm not saying you go along to get along. Expressions like that are foolish. It is a very complicated world. There's a hundred thousand ethics consultants running around the United States and everybody is saying all these lovely platitudes. Nobody seems to realize that it is incredibly hard to figure out how to manage responsibly. It's simply one blah, blah, blah thing after another. It is hard work. For all that everyone is running around screaming about how we need to return to traditional values and where have our morals and values gone, let me tell you in business we are a thousand percent more ethical, tighter in our standards, than we ever were.

I'm so tired of this thinking that there's somehow going to be simplistic statements or solutions to this stuff. It is hard, hard work. Ethics is in the process, not in standing up and saying I'm not going to do that because I think that's bad or I'm going to go along to get along.

Dr. O'Toole: I think the U.S. Foreign Corrupt Practices Act is both fair and realistic, and I think we can live with it. I think it's been a much bigger problem in the past than it is now. This is a question that is sort of dated, I used to hear companies complaining about it, I don't hear them complaining about it anymore. I don't think you have to go beyond compliance with that. It's a pretty good law.

Mr. Hanson: Through the Foreign Corrupt Practices Act the United States made a decision that its companies ought to behave by a set of standards that we set within the U.S. and that as a nation we would pay the price if this limited some business opportunities abroad. It may not always be a level playing field, but we have determined that we all benefit from the encouragement of ethical behavior. Some companies clearly skirt the intent of the law by hiring local agents and deliberately avoiding knowledge about techniques used to get and keep business. The Foreign Corrupt Practices Act cannot be written tightly enough to avoid all such arrangements.

Companies make a decision in defining their fundamental values whether they will be characterized by minimum compliance or adherence to the spirit of the laws and of their own [stated] values. Many companies have a minimalist compliance approach to behavior at home and abroad. Others take more seriously the implications of their own avowed values and attempt to implement them consistently across the company. This drives them to go beyond the minimum requirements of the law and I believe they reap rewards in [terms of] respect from their various stakeholders and in increased employee morale and productivity from such an approach.

Dr. Hoffman: What can be considered a facilitating payment is a fairly gray area. A clear case is when you have some product on the dock of a foreign country and you need to get that product moved to some other location in the country. It may require [making] some kind of payment [just as] you would give a gratuity to a person who carries your bags or to a waitress who brings you your food. But if a corporation is [constructing a] building in another country and an inspector doesn't pass it because you have refused to give him money, I think most people would see that as a bribe.

But what is that manager to do when everything he does continues to be rejected because it's not "up to code" and his competitors are not receiving those kinds of rejections because they are paying money to make sure that they do pass? Do you pay, or do you continue to hold out and say that I won't pay and take the consequences? I've heard of a company that simply did not pay and finally had to pay much more in terms of redoing the buildings. It was an Indian company. They were operating in a Mid-East country. The manager on site begged the home office to pay because it was so much cheaper. But the home office wouldn't do it. It cost them millions of dollars.

A lot of people have the impression that it's just American companies that have this high sense of moral superiority or integrity. [But in general] I think Americans place a higher importance on doing business ethically. . . . In

other countries, I think a lot of people see business as sort of a fundamentally amoral or unethical arena to start with, so they don't expect business to operate as ethically as Americans expect business to operate. I do think it has historical and religious roots in our country, whereas it doesn't so much in other countries. I do think that American corporations, as painful and difficult as it may be to compete, do have an ethical responsibility not to pay bribes to foreign officials to achieve contracts, even though our European and Japanese competitors do not have the same kind of ethical feelings of obligation.

Mr. Wood: U.S. companies can do business in very difficult markets. When you stick up for your own standards you earn respect. You establish a good bargaining position. If you're looking for the long term, you're always going to be held accountable in the last analysis to U.S. standards, not the standards of some foreign turf.

Question: Is there an ethical problem when a U.S. company runs a foreign operation that complies with local laws but is below the minimum health and safety standards mandated for U.S. employees? Are the ethical considerations different when the company simply contracts with local business people who make all employee-condition decisions?

Dr. O'Toole: One of the biggest ethical problems that American corporations face is in subcontracting abroad. They close an operation here where they are forced to provide safe and healthy working conditions, provide the minimum wage, and they open up a sweat shop in the Philippines where people are paid 40 cents a day. This is far and away, of all ethical questions, the most difficult one that the corporations face. Until recently, they have just turned their backs on this. I figure it's where most American businesses are most vulnerable. There are very, very few companies—I'm having difficulty thinking of one—that treat their employees in the Third World as well as they treat their employees here. And I'm not talking just about wages, but in terms of benefits, in terms of participation, in terms of respect.

The problem is far away; it's out of sight and out of mind. The corporate executives tend not to go through the factories [abroad]. They tend not to understand conditions of people who speak different language. They don't understand what their lives are like.

[There] is a failure to empathize, to see that a worker in the Philippines is as much a human being as a worker in the United States. [American companies] went to get the cheap labor. I think that it is possible to say that we are going to assure that all employees, everywhere around the world, have safe conditions and that they earn a living sufficient enough to support themselves and their families with some opportunities for savings.

If laws are woefully inadequate, if the company is poisoning water supplies and the local government doesn't care about it, I think that the

corporation has a responsibility. These questions are very, very tough. Do we go to the standards of the U.S. or do we go to some other standard? Where do you draw the line? These questions really become true ethical dilemmas, because the managers have to make moral judgments without any kind of legal guidelines. The highest standard is unrealistic.

Standards that are set in the United States for environmental questions and occupational safety and health are arbitrary; they're not scientific. I don't think, from what I see, that many American corporations ask the tough ethical questions about operations overseas. When they go overseas the notion is that it is now somebody else's problem. I talk with CEOs all the time. They spend their time worrying about the EPA, about competitors, about their employees. How much time do they spend asking questions having to do with their operations in the Third World? I've never heard anybody ever [list] it on their agenda.

Mr. Hanson: I believe nothing is credible except [adhering to] a worldwide standard in health, safety and human rights that demonstrates a consistent concern for employees, customers and communities in which the firms operate. . . . I think the most enlightened and thoughtful companies define a worldwide standard which is applied consistently. This probably at least meets the minimum standards of United States compliance. It may go well beyond that. Most of the large and enlightened companies in the United States have looked at the risks of having different standards of health, safety and human rights in different parts of the world and have concluded that such practices would give mixed signals to their own managers and employees and would expose them to liability suits and public pressure when disasters strike.

Union Carbide was not held in the court of public opinion to the Indian standard; they were held to the American standard. . . . But standards must be implemented with a sensitivity to the level of development and the culture of the local economy. This does not mean that you value life less in other parts of the world; it merely means that you may need to adapt policies to confront the realities of family and social structure in certain parts of the world. There are many organizations which do operate according to lower environmental standards, but I think that is changing. I think public opinion will not tolerate that over the next five years.

I don't think one is required by a worldwide standard of ethics to pay the same wages, [but] there clearly is an ethical issue. It's related to traditional religious concepts of a living wage or to how wages can improve the skills and lives of the people employed. . . . There is probably an obligation to make total compensation enable workers to provide for their families and improve their own skill level.

"Beyond compliance" is not the right way of describing [ethical duties], nor is that the way most companies think about it. They think about in terms of what should we provide for our employees that is economically viable but

is still sensitive to their development. And, generally, the minimum requirements are far below that.

Dr. Edwards: The question suggests that the minimum health and safety standard mandated for U.S. employees is somehow itself, perforce, an ethical standard. The people of [a lesser developed] country, if they have a freely elected government that represents them, may be willing to accept costs that we in a more well-developed economy and society would not be willing to accept, including environmental damage [and] a lower degree of protection for people in the workplace. By avoiding those preventive costs, they may be able to develop their economies more rapidly, prevent starvation, malnutrition, disease. That's a reasonable cost-benefit analysis for people to make, The difficult problem is when U.S. companies acquire overseas subsidiaries or operate in countries whose governments are not freely elected or representative. Then it becomes a harder question, whether the government that exists has the right to make those decisions on behalf of its people.

Dr. Hoffman: It seems to me that corporations have a responsibility to demonstrate ethical or moral leadership in going beyond what the law says they have to do in the case of environmental protection. I don't think they should go it alone. Several years ago a paper company manufacturer got environmental religion and decided to put all sorts of expensive equipment on his paper company so that his effluence would not pollute this small New England stream. Well, none of the other manufacturers did that, so his company couldn't compete, went broke, and put 500 people out of work.

The bottom line is that the stream was no cleaner because all the other companies were still dumping their pollutants into the stream. There has to be moral leadership taken on the part of corporations to find ways to bring all of their competitors into line. That's why we have laws. Corporations need to take some moral leadership and work with government to help set appropriate standards.

When you're abroad, it seems to me that you have a responsibility to live up to the same kind of standards you are operating under in this country, especially when you're dealing with environmental standards, with the health and safety of employees and so forth. Now, I'm not saying you should pay employees the same amount in Nicaragua or in other foreign countries that you pay them in the United States. That might even have harmful effects in terms of disrupting the economy. But I do not think that a company is being ethically responsible in going into Mexico and practicing things that it would be forbidden to do in this country.

It has an ethical obligation to make sure that the same kind of health and safety standards that are in effect in this country are employed there and the same kind of environmental practices are employed there as are required here. You have to look at these things on a case-by-case basis. There may be products that we do not want used in this country but because of different circumstances in other countries may be appropriate there; for example, DDT.

In a country that has a tremendous problem in terms of starvation, where crops are essential, then I might reassess whether that product should be used.

Mr. Ayers: I won't apply California's standards to my business in Minnesota. Why should I apply California's standards to my business in Tijuana? It's clear that the environmental health and safety standards and laws in some countries are not adequate to protect either the environment or the employee, in which cases I will apply a standard that does protect the environment and the employee. I won't sign up for applying California's standards or Sweden's standards, but I'll apply an appropriate standard which goes well beyond the local, legally required standard. I have to make a judgment call as a businessman.

Mr. Ursu: Do we have an affirmative duty to try to lobby a [foreign] government to raise standards? I doubt it. Right or wrong this is a commercial organization. Our employees on their own may choose to affiliate with the Sierra Club of Mexico or Peru or wherever and do things on their own because they have values that they want to serve. . . . As far as doing good, unrelated to [serving] stakeholders, 3M and many other companies have foundations that give grants, support starving children in Africa, things like that that really don't have a direct link to the stakeholders.

Mr. Norris: I think that you have to be governed primarily by the laws of the country you're operating in, not by U.S. laws. . . . We can't be responsible for the world. If you try to do that, where do you stop? We had a terrible situation in South Korea. We wanted to do the right thing. The government said that if you treat your employees better you're going to screw up the whole system. . . . We wanted to pay them a little bit more, provide them a little health care and give them a little more flexibility in their working hours, trying to do for them what we were doing for other employees. All we succeeded in doing was getting into a pissing contest with the government. . . .

There's the practicality you have to always keep in mind. If [for example] you can't afford to stop dumping in the Rio Grande, you keep dumping until you get the laws changed . . . then the others would have to comply, so you would not be at a competitive disadvantage. . . . You should [stop dumping] if you can afford to, even if it's not required by the law. Any company that conducts itself in an ethical manner would do that.

Mr. Dolan: I don't think this is an ethical problem. It assumes first of all that U.S. standards are the right standards. I'm a firm believer that the United States should not be imposing its standards on the rest of the world because we know better than everybody else. Shouldn't we leave it to Mexico to determine what is in the best interests of the Mexican people? It's possible that a certain set of standards imposed upon Mexico would cut back on jobs substantially and produce greater harm. There are limits to all of this. We all

have a feeling for minimal health standards, minimal environmental standards—I mean in our own minds what we think is really right. That's the ethical line.

The ethical line is not necessarily drawn by the U.S. Congress when you're dealing outside of the country. If you're in Mexico, you comply with their legal requirements. If you think those requirements would still present a health hazard to your employees then you got an ethical issue. How you define that, I think that's something on which reasonable people can differ. Let's say you have a plant down in Mexico and all of the sudden, like Constantine [seeing] the Cross in the sky, you're a believer. You say what we're doing is wrong. But I don't think you can say we're going to shut that plant down tomorrow and throw 1,000 Mexicans out of work. To satisfy your own conscience, you're causing immediate harm to a whole lot of people.

Mr. Johnson: You have to recognize your limitations. One of the most ethical things would be to work in alliance with other like-minded companies in pressing governmental change. That's an affirmative duty. For example, the automakers don't have a legal obligation to go to the safety agency and say, "We have come up with a way to save many lives. No one of us can afford to do this voluntarily because it will put us at a competitive disadvantage." But that would be a highly ethical initiative.

Question: When companies derive large portions of their business from other countries, do they have an ethical obligation to see that persons from those countries are fairly represented in the employee pool and management ranks? Should the board of directors reflect the international diversity of the revenue and production sources?

Dr. Hoffman: The employees of a particular plant should be appropriately represented by the kind of diversity that country represents. It's the same kind of consideration that we have in this country in which we try to hire people who appropriately represent the diversity in our country, and also, if we are going down to another country and using their natural resources, using their roads, their infrastructure, in order to profit, we have some obligation to hire local people to help run that operation. The consideration there is fairness. From a practical, perhaps less ethical point of view, it would also seem to be the best way of building good community relations. . . .

There seems to be some ethical issue as well as good management policy to have people on the board that appropriately represent the country or countries that you're doing business with. For one thing, they are going to provide perspectives that you're not going to have as an outsider. From an ethical point of view, the interests and concerns and problems that might arise [in a foreign] operation should be represented by someone who knows that country.

Mr. Ayers: There ought to be some representation in employee pool and management ranks. [But] the board of directors reflects ownership. If [foreigners] own stock and want to elect board members, they ought to do that. We have non-U.S. citizens and residents on our board. But I don't know that you can link board diversity to revenue and production sources.

Dr. O'Toole: I don't think that having, for example, a Filipino businessman on the board of Levi Strauss would make Levi Strauss any more ethical. The Filipino businessman's probably exploiting his own people. Merely getting ethnic representation doesn't ensure anything at all. The board of directors [should] include people with sensitivity toward these broader ethical questions, regardless of national origin.

Dr. Edwards: I don't think there is any moral or ethical obligation to do that. I certainly don't think there's any ethical obligation that the board of directors reflect the international diversity of the revenue and production sources. There may be prudential reasons to do it and may be good business reasons to do it, but I don't think ethics has a vote here.

Mr. Hanson: I don't think there's an obligation for quotas by country, but there is certainly the opportunity to create employment and promotion opportunities for nationals of every country in which a company [operates]. It is simply wise for the board of directors to reflect the international diversity of a company's operations, but I don't think there is any obligation to have a proportional representation based upon revenue or production.

Ms. Paterson: We're seeing great efforts made, [but] there needs to be more effort to seat women and minorities on boards of directors. I would think that same [logic applies] when it comes to multinational companies. They're going to benefit in the long haul by [having diverse boards] because it says that they recognize the input from these diverse stakeholders is going to [help them] stay profitable.

Mr. Thigpen: I'm not sure it's an ethical consideration. Companies that don't do that are stupid. They ought to have an international perspective. Globalization is yesterday's news. Unless you are globalizing across the board, and that includes in your board of directors, then you've got a problem.

Question: Are U.S. standards of conducting business appreciably different from the standards of Western Europeans, Eastern Europeans, or East Asians? How can U.S. companies maintain their values and ethical standards when doing business in countries that apparently permit standards considered lower from the U.S. point of view?

Dr. Hoffman: When people start talking about cultural differences in terms of ethical behavior, my suspicion is that the differences are quite often much more superficial in terms of action and mores rather than in terms of ethical standards and principles. It can be a matter of interpretation as to how to abide by an ethical standard. . . . The Eskimos used to commit patricide. They would literally put their parents on an ice floe because the older the parents got, the more difficult it was for them to live that kind of nomadic life.

Part of it was religious because they believed that they entered the afterlife in the same physical form that they departed this world. But the Eskimos certainly believed in the ethical principle of honoring their parents, and we also believe in the ethical principle of honoring our parents, even though we practice very different methods of doing that. We put them in old age homes. I'm not sure which is more humane. The point is, it's not true that the Eskimos were operating under a different ethical standard than we were.

Mr. Hanson: It is the excuse of ineffective global managers that they can't achieve their goals because they are not allowed to stoop as low as local business practices. Even when local business practices do reflect questionable behavior I think American companies have an obligation to align themselves with the reform elements in those countries to wipe out corruption and favoritism in business.

In any country there are reform elements that are trying to clean it up. And for the American companies to come in and simply say that's the way it is and therefore that's the way we'll behave means they become part of the problem rather than part of the solution. . . . I strongly believe have been involved in pressuring the South African government for apartheid reform should be involved in the development of ethical and social policies which reflect concern for human rights, for employee and community safety, and for environmental concerns.

The principle has been established in South Africa that the corporate obligation is, number one, to operate business according to ethical human rights, safety and environmental practices. It is further established that it's the obligation of companies to protest and lobby when local policies do not provide adequate protection for human beings or the environment. What form that takes will depend upon the national setting that the company operates in.

In some countries visible protests will be counterproductive. . . . In societies where there are no avenues for promoting liberalization of policies, companies probably have no alternative but to withdraw. . . . It is clearly the obligation of the companies to operate by standards that are ethical and defensible, and, secondly, to contribute to the process of liberalization which makes the benefits of such policies available to all within the country.

Dr. O'Toole: I think that too much is made about the differences among cultures and not enough of the similarities. A lie is a lie the world around. And trust means the same thing pretty much the world around. I don't think

that Americans are being undercut because we're forced into this higher standard. I don't believe that is happening, or to the extent that it's making a hell of a difference. Americans have trouble when they assume that the whole world thinks like Americans. There are handicaps in not understanding foreign languages [and] cultures that Americans suffer from, but I don't believe that is the same thing as saying that American ethical standards are higher. Across cultures and religions the questions of morality are all pretty similar.

Ms. Paterson: I think all of these cultures value integrity, responsibility, fairness, trust, and honesty, those kinds of virtues or traits. That's what we've got to focus on for the future, common character values. The standards of conducting business that come through law are much more rigid and higher in the United States. But I think we'll see that change, too. . . . I think [American companies] have to continue to adhere to the standards they have operated by in the United States and be a catalyst, a real advocate, in the world marketplace that will cause those kinds of standards to be adopted internationally.

Mr. Norris: The best way for most companies to operate [abroad], particularly smaller [companies], is to work through local organizations. You may own part of it so you have some control over it. But don't try to change their culture, their standards. It's awfully hard to do. It's a loser. They don't appreciate it.

Mr. Ayers: There's difference in local practices and how people view the world, but when you get right down to it, nobody likes to be lied to, nobody likes to be cheated. The president of Brazil was thrown out of office; the prime minister of Japan lost his job. I used to think that the Brazilians loved corruption. The people of Italy are standing up and saying we're not going to take this anymore. The world is becoming more mature, more sophisticated, and communications are better. I think you're beginning to see a convergence around some core ethical values and a growing unwillingness of people to tolerate [bad behavior]. My [company's] values are integrity, quality, performance, mutual respect, and diversity. If I'm in Russia, should I adopt their legal standards, is that my base line? Just because I happen to be an American does that mean my laws are the right ones? Maybe they don't go far enough.

Mr. Thigpen: I think they are different. You have to go for the highwater mark. You also have to make a very reasoned judgment as to what standards you consider absolute minimums and what standards you're willing to surrender. Senior [executives] have to make the decisions. What the senior guys have to do is say beyond this we will not go, we won't do business in a country unless [certain] conditions are extant.

Mr. Ursu: 3M's been in Italy a long time. As you read in the paper, virtually every quarter of Italy has been touched by scandal. We have not. We have in fact been told by customers who are now coming to us after they or their suppliers were implicated in these corruption problems, that they want to do business with us because they know that we don't do these kind of things. In the current environment these people want a measure of safety in dealing with a company that has a high reputation for integrity. That's been useful to us.

Source: From "Maintaining Ethics and Values in Foreign Cultures," *Ethics: Easier Said Then Done*, 1993 issue 22, p. 41–48; published by The Josephson Institute of Ethics, Marina Del Ray, California. Used with permission.

8

Commercial Corruption

As enemies go, the global corruption hydra has proven a frustrating one: lop off one of her heads and dozens more continue with their hideous damage. The more reason to cheer the news that a young agency called Transparency International has set up shop in Berlin to slay the monster.

TI was founded in 1993 by former World Bank director Peter Eigen, who spent decades in places such as Kenya and Botswana honing his rage over Western tolerance of corruption. The little nonprofit is funded by multilateral groups—the World Bank gives it consulting work—national programs, and private companies that have learned firsthand the burn of corruption, such as Enron in India.

Mr. Eigen says TI grew out of a simple conviction regarding development: "that corruption is what stops economic development in these countries and holds them back." In just a few years TI chapters—from the Philippines to Bangladesh to Uganda to Uruguay—have flowered in 60 nations. The goal is to build local confidence in the rule of law in the realms of business and politics.

This starts with such practical measures as tutoring in double-entry bookkeeping. Tanzanian politicians, for example, recently signed a document known as the Arusha Integrity Pledge that they would proceed "by conducting a free, fair, responsible and corruption-free election campaign" by "supporting the independence of the Judiciary" and so on. Members and others interested parties consult a source book on ethics or contact TI directly via website and e-mail (http://www.transparency.de and ti@transparency.de).

It all sounds pretty humble, but TI work has brought concrete results. Supporters of Transparency Ecuador pushed the government to pressure four international consortiums, among them one that included the U.S. firm Raytheon, into signing a pledge not to use bribery in pursuing a $160 million oil refinery contract. Moving on the principle that a little sunlight can do a lot to burn away what grows in damp corners, TI prints press reports of corruption in individual countries in its annual report and maintains its own "Corruption Perception Index."

Particularly compelling is the fact that TI has given voice to those in developed nations who feel Western habit and double standards have set

their countries back. "We will do our best to get our house in order," said Ethiopian Prime Minister Meles Zenawi at an international conference a year ago, "but our Northern friends: please do not support the bribery by your exporters by giving them tax deductions for their bribes."

Tax deductibility of foreign bribes in the West seems a great place to start. Earlier this year an OECD committee chaired by a Swiss professor at the University of Basel, Mark Pieth, published an information-laden report on corruption in international business. The finding: only a third of 27 member-governments in the OECD forbid outright domestic tax deduction for foreign bribes paid by their nationals. (These include the U.S., Canada, Britain and Japan.)

Western countries whose tax regimes still allow or tolerate tax deductibility of foreign bribes as of October include Belgium, Luxembourg, France, Sweden, Greece and Germany. In some nations, businesses claiming deductions can even write "bribe" or "extortion" on the relevant line in the tax form. Other nations dress their bribery up in euphemism: on the German form such costs are called *nuetzliche Ausgaben*—"useful expenditures."

In recent years, efforts to undo such attitudes have often got caught in the crosswinds of various international trade wars. Lately, though, the anti-corruption effort seems to be gaining momentum. In mid-December, the United Nations General Assembly exhorted members to criminalize the practice of bribery abroad. Earlier in fall, the International Monetary Fund and World Bank launched a showcase campaign to throttle the evil; the Bank's anti-corruption plans are so tough they provoked a hissy fit from some Third World plutocrats. Back in the spring, the OECD's executive council urged members to eradicate tax tolerance of bribes. At this writing, lawmaking bodies in Norway, Switzerland, Denmark and Australia are hammering at legislation to bar deductibility. May the New Year bring further progress.

CORRUPT AS THEY COME

Corruption rankings in 1996, based on the level of corruption in a country perceived by employees of multinational firms and institutions (1 = most corrupt in survey, 54 = least corrupt)

1 Nigeria	**12** Uganda	**23** Spain	**34** Chile	**45** Australia
2 Pakistan	**13** Colombia	**24** Hungary	**35** Belgium	**46** Netherlands
3 Kenya	**14** Egypt	**25** Jordan	**36** France	**47** Switzerland
4 Bangladesh	**15** Brazil	**26** Taiwan	**37** Hong Kong	**48** Singapore
5 China	**16** Ecuador	**27** Greece	**38** Japan	**49** Norway
6 Cameroon	**17** Mexico	**28** South Korea	**39** Austria	**50** Canada
7 Venezuela	**18** Thailand	**29** Malaysia	**40** U.S.	**51** Finland
8 Russia	**19** Bolivia	**30** Czech Rep.	**41** Israel	**52** Sweden
9 India	**20** Argentina	**31** Poland	**42** Germany	**53** Denmark
10 Indonesia	**21** Italy	**32** South Africa	**43** Britain	**54** New Zealand
11 Philippines	**22** Turkey	**33** Portugal	**44** Ireland	

Source: Transparency International, Berlin

9

Conscience or the Competitive Edge?

Kate Button and Christopher K. Bart

Case A

This case was written solely for the purpose of stimulating student discussions. All events and individuals are real, but names have been disguised at the request of the principals involved.

The plane touched down at Bombay airport precisely on time. Olivia Jones made her way through the usual immigration bureaucracy without incident and was finally ushered into a waiting limousine, complete with uniformed chauffeur and soft black leather seats. Her already considerable excitement at being in India for the first time was mounting. As she cruised the dark city streets, she asked her chauffeur why so few cars had their headlights on at night. The driver responded that most drivers believed that headlights use too much petrol! Finally, she arrived at her hotel, a black marble monolith, grandiose and decadent in its splendour, towering above the bay.

The goal of her 4-day trip was to sample and select swatches of woven cotton from the mills in and around Bombay, to be used in the following season's youthwear collection of shirts, trousers, and underwear. She was thus treated with the utmost deference by her hosts, who were invariably Indian factory owners, or British agents for Indian mills. For three days she was ferried from one air-conditioned office to another sipping iced tea or chilled lemonade, poring over leather-bound swatch catalogues, which featured every type of stripe and design possible. On the fourth day, Jones made a request which she knew would cause some anxiety in the camp. "I want to see a factory," she declared.

After much consultation and several attempts at dissuasion, she was once again ushered into a limousine and driven through a part of the city she had not previously seen. Gradually, the hotel and the western shops dissolved

into the background and Jones entered downtown Bombay. All around was a sprawling shantytown, constructed from sheets of corrugated iron and panels of cardboard boxes. Dust flew in spirals everywhere among the dirt roads and open drains. The car crawled along the unsealed roads behind carts hauled by man and beast alike, laden to overflowing with straw or city refuse—the treasure of the ghetto. More than once the limousine had to halt and wait while a lumbering white bull crossed the road.

Finally, in the very heart of the ghetto, the car came to a stop. "Are you sure you want to do this?" asked her host. Determined not to be faint-hearted, Jones got out of the car.

White-skinned, blue-eyed, and blond, clad in a city suit and stiletto-heeled shoes, and carrying a briefcase, Jones was indeed conspicuous. It was hardly surprising that the inhabitants of the area found her an interesting and amusing subject, as she teetered along the dusty street and stepped gingerly over the open sewers.

Her host led her down an alley, between the shacks and open doors and inky black interiors. Some shelters, Jones was told, were restaurants, where at lunchtime people would gather on the rush mat floors and eat rice together. In the doorway of one shack there was a table which served as a counter, laden with ancient cans of baked beans, sardines, and rusted tins of a fluorescent green substance that might have been peas. The eyes of the young man behind the counter were smiling and proud as he beckoned her forward to view his wares.

As Jones turned another corner, she saw an old man in the middle of the street, clad in a waist cloth, sitting in a large tin bucket. He had a tin can in his hand with which he poured water from the bucket over his head and shoulders. Beside him two little girls played in brilliant white nylon dresses, bedecked with ribbons and lace. They posed for her with smiling faces, delighted at having their photograph taken in their best frocks. The men and women moved around her with great dignity and grace, Jones thought.

Finally, her host led her up a precarious wooden ladder to a floor above the street. At the top Jones was warned not to stand straight as the ceiling was just five feet high. There, in a room not 20 feet by 40 feet, twenty men were sitting at treadle sewing machines, bent over yards of white cloth. Between them on the floor were rush mats, some occupied by sleeping workers awaiting their next shift. Jones learned that these men were on a 24-hour rotation, 12 hours on and 12 hours off, every day for six months of the year. For the remaining six months they returned to their families in the countryside to work the land, planting and building with the money they had earned in the city. The shirts they were working on were for an order she had placed four weeks earlier in London, an order of which she had been particularly proud because of the low price she had succeeded in negotiating. Jones reflected that this sight was the most humbling experience of her life. When she questioned her host about these conditions, she was told that they were typical for her industry—and for most of the third world, as well.

Eventually, she left the heat, dust, and din of the little shirt factory and returned to the protected, air-conditioned world of the limousine.

"What I've experienced today and the role I've played in creating that living hell will stay with me forever," she thought. Later in the day, she asked herself whether what she had seen was an inevitable consequence of pricing policies that enabled the British customer to purchase shirts at £12.99 instead of £13.99 and at the same time allowed the company to make its mandatory 56 percent profit margin? Were her negotiating skills—the result of many years of training—an indirect cause of the terrible conditions she had seen?

Once Jones returned to the U.K., she considered her position and the options open to her as a buyer for a large, publicly traded, retail chain operating in a highly competitive environment. Her dilemma was twofold: Can an ambitious employee afford to exercise a social conscience in his or her career? And can career-minded individuals truly make a difference without jeopardizing their future?

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Case B

Olivia Jones described her subsequent decision as follows;

"The alternatives for me were perfectly clear, if somewhat unrealistic: I could stipulate a standard of working conditions to be enforced at any factory employed, and offer to pay an inflated price for merchandise in an effort to fund the necessary improvements. This would mean having to increase the margins in other sections of the range and explaining to my controller exactly why prices had risen.

"There was, of course, no guarantee that the extra cash would make its way safely into the hands of the worker or improve his working conditions. Even exercising my greatest faith in human nature, I could see the wealthy factory owner getting increasingly fatter and some other keen and able buyer being promoted into my highly coveted position!

"I could refuse to buy from India. This would mean I would have to find alternative sources at equally low prices to justify my action. There was always Macau, where I knew conditions were worse if anything, or Hong Kong, where conditions were certainly better, from what I had seen, but prices were much higher. I had to ask myself if I would truly be improving the plight of the workers by denying them the enormous orders that I usually put through their factories. Or would I simply be salving my own conscience by righteously congratulating myself at not dealing in slave labour? Doubtless my production schedule would be snapped up eagerly by the next buyer who was hungry for cheap labour and fast turnaround.

"I could consider speaking to the powers that be and ask their advice. After all, the group was proud of its philanthropic reputation and had promoted its charity work and sponsorship of various causes, including Wimbledon Football Club and Miss World. This in mind, I approached my line manager, who laughed at my idealistic naivety and made it quite clear that I should hold my tongue if I knew what was good for me.

"It seemed I had but two choices. Either I quit the company and look for an employer which would be more responsible in its attitude towards sourcing merchandise, or I could continue to buy as before, but aware of the consequences and exercising a conscience wherever possible. I won't bother to list my excuses for opting for the latter choice.

"I believe that there is no solution, no generalization which can be used as a precedent in this type of scenario. I don't know to this day what action I could have taken to improve the lives of those individuals whom I felt I had compromised.

"Every day in various work situations, employees, and specifically managers, come up against questions of conscience versus the status quo. It may be that you are encouraged to show prejudice against an individual or group of employees due to their race, colour or clique; maybe your boss asked you to lie to camouflage an embarrassing error and insinuate that the fault lies

with someone else; maybe your employer's policy requires you to screw a client or a supplier to close a deal and maintain the bottom line.

"Each case is different and demands its own evaluation. Each man and woman must draw their own set of rules and regulations to suit their own situation and conscience.

"It takes brave individuals to jeopardize their careers for a cause but it is thanks to those who do take a stand that great feats of humanitarian work are successfully undertaken and completed. We should all evaluate the choices that are open to us and be true to ourselves. Let your conscience be your guide within the realms of reality.

"The most important lesson that I learned from the episode was that, above all, you have to learn to live with the choices that you make."

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10

Transforming Legislation into Regulation

Kathleen A. Getz

Agency Processes

After Congress passes a law and the President signs it (or allows it to be effected without his signature), the executive branch assigns rulemaking responsibility to an executive branch agency (usually the agency that should be responsible is obvious, based on the substance of the law). Within the agency four steps are taken before public participation officially begins:

1. The Work Group (a committee appointed by the administrator) prepares an Action Memorandum. The memorandum outlines the Work Group's goals and needs and requests permission to begin working. The Administrator must approve the action memorandum before work proceeds.

2. Periodically the Work Group is subject to Steering Committee Review. The Steering Committee comprises assistants to the Administrator, and these reviews are intended to assure that the Work Group is making progress.

3. When the Work Group has developed a proposed rule, it is subject to Red Border Review. Each member of the Steering Committee must concur or not concur with the proposed rule. If a majority concur, the proposed rule is forwarded to the Administrator.

4. Based on comments of the Steering Committee, the Administrator decides whether or not to sign the document. If s/he does so, the Proposed Rule is published and subject to public comment under the rules of the Administrative Procedures Act.

Administrative Procedures

The Administrative Procedures Act (APA) establishes the process by which the public may participate as executive branch agencies develop enforceable rules based upon laws passed by the Congress. APA applies after initial rulemaking work, described above, is completed by an agency.

Agency rulemaking proceedings can take on several different procedural forms under the APA: They may be formal, informal, hybrid or exempted completely from the Act's procedural requirements.

Exempted rulemaking. Exemptions give agencies discretion to determine how much public participation (if any) will be permitted before a final rule is issued. Exemptions are permitted under the following circumstances:

- proceedings related to a military or foreign affairs functions, to agency management or personnel, or to public property, loans, grants, benefits or contracts. [Note: The policy behind these exemptions is not entirely clear.];
- proceedings in which public participation would be impracticable, unnecessary, or contrary to the public interest;
- proceedings related to the development of a final rule that is an interpretive rule, general statement of policy, or rule of agency organization, procedure or practice.

Informal rulemaking. The basic rulemaking procedure is generally called informal or notice-and-comment rulemaking. Unless Congress directs an agency differently, informal rulemaking applies.

This process is simple and flexible. There are three requirements:

- The agency must give prior notice, which is usually done by publication of an item in the Federal Register. The Notice of Intended Rulemaking must contain the terms or substance of the proposed rule or a description of the subjects and issues involved, as well as reference to the legal authority for issuing the rule and information about the opportunities for public participation.
- After publication of the Notice of Intended Rulemaking, the agency must give interested persons an opportunity to participate through submission of written comments containing data, views or arguments. The agency is not required to hold oral hearings, though it may decide to do so.
- After the agency has considered public comments, it issues a Final Rule, which is published in the Federal Register.
- With the final rules, the agency issues a concise general statement of basis and purpose, which explains the reasoning behind the final rule, but which need not respond specifically to the written comments.

Informal rulemaking is simple and efficient, but it gives interested persons few rights to know and contest the basis of a proposed rule.

Formal rulemaking. If a statute requires it, the agency must conduct a trial-type hearing and provide interested persons with an opportunity to testify and cross-examine adverse witnesses before issuing a rule. The process is called formal rulemaking or rulemaking on a record. The first two steps of this process parallel informal rulemaking, but there are additional requirements:

- Notice of Intended Rulemaking.
- Submission of written comments.
- After review of written comments, the agency must hold oral hearings.
- After the oral hearings, the agency publishes a Final Rule in the Federal Register.
- With its final rules, the agency must issue comprehensive responses to all written and oral arguments made by public participants.

Formal rulemaking provides abundant opportunities to participate and to challenge the agency's proposals, but at a cost of considerable delays and expense.

Hybrid rulemaking. Dissatisfaction with formal and informal rulemaking led to reforms in procedures. Under hybrid rulemaking, informal procedures are preferred, but if a participant can make a convincing showing that an important contested issue needs to be explored in an evidentiary hearing, then due process requires the agency to provide some trial-type procedures within the general context of informal rulemaking.

11

Of Bees and Lighthouses

This brief in our series on the modern classics of economics looks at a paper that is still as controversial as when it first appeared—and suddenly much more relevant to the debate on economic policy. It set out to demolish traditional thinking on "public goods" and "externalities"

The Problem of Social Cost by Ronald Coase, *Journal of Law and Economics* 2, October 1960.

Most economists, including many who would claim otherwise, find the paradigm of *perfect competition* indispensable for thinking about questions of *resource* allocation and microeconomic efficiency. Every novice student learns the elementary propositions of *welfare economics*. These assert that, under perfect competition, market forces will cause resources to be used in such a way that it is impossible to make somebody better off without making somebody else worse off—in this sense, perfect competition avoids waste. Such a pattern of resource allocation is called a *Pareto optimum*.

While learning this, the novice student also learns that perfect competition does not exist. It requires, among other things, that there be so many buyers and sellers that none can affect prices; if a firm cuts its output it will not push up the price. It requires all the goods produced by different producers in any particular market to be "homogeneous" (ie, identical). It requires "perfect information." It requires there to be markets not just for actual goods but also for "contingent goods" (eg, the market for umbrellas in London next January if it is an unusually rainy month). And so on.

One strand of modern research has devoted itself to the ferociously difficult task of building formal models that precisely state the conditions that are necessary and sufficient for competition to work, and describe whether and in what sense the result is "efficient". The landmarks are "Existence of an Equilibrium for a Competitive Economy: by Kenneth Arrow and Gerard Debreu (published in 1954) and "General Competitive Analysis" by Mr Arrow and Frank Hahn (published in 1971). That these were towering intellectual achievements

is not in doubt; however, their influence—outside the narrow circle of specialists in pure microeconomic theory—was not great.

Almost all modern economists, however much they might resist such classification, are drawn to one of two camps. The first believes that perfect competition is a useful paradigm that policymakers should take as a guide; this is the liberalising, deregulating, competition-promoting wing of the profession. The other, the interventionist wing, holds that the paradigm is a dangerous one that policymakers should ignore. In choosing where their loyalty lies, the prejudice that probably matters most is their view on public goods and externalities.

Smokestack Economics

One of the assumptions underlying the idea of a Pareto optimum is that private costs and benefits are the same as social costs and benefits. In practice, this is not always so. The price you pay for your lawnmower does not reflect the cost to your neighbours of the noise it makes when you use it. The price people and firms pay for their carbon fuels does not reflect the cost to everybody else of filling the atmosphere with greenhouse gases. These are examples of *externalities*—the economic effects that a transaction has on third parties.

Most economists define *public goods* in terms of "non-excludability" and "non-rivalrous consumption". Clean air is an example of *non-excludability:* if some people incur costs to avoid pollution, those who do not pay cannot be excluded from the benefits. They will be tempted to free-ride at others' expense, and producers of clean air would have trouble collecting payment for their services. (In a sense, non-excludability is the obverse of externality.)

Clean air, by and large, also serves as an example of *non-rivalrous consumption:* by breathing, you do not perceptibly reduce the supply of air for others. This means that, even if it were possible to deal with free-riders by making them breathe dirty air, it would be economically inefficient to do so. If, at the margin, a good can be provided costlessly, efficiency demands that it be provided free. This is another way of stating the old rule that price should be set equal to marginal cost.

Together, non-excludability and non-rivalrous consumption imply that clean air is a public good. There cannot be an efficient private market for it. The social benefits of maintaining the supply of clean air will exceed the private benefits of doing so. Unless governments use taxes, subsidies and other forms of intervention to promote it, too little will be supplied.

The crucial question for policy-makers is this: how common are externalities and public goods? For years it seemed they were common enough to turn the competitive paradigm into something of little practical use.

Standard examples were drummed into students' heads. The favourite illustration of a public good was the lighthouse: the conditions of non-excludability and non-rivalrous consumption were both met, and it was obvious that if governments did not provide lighthouses nobody would. The favourite example of an externality, odd as it might seem, was bee-keeping. Here the

externality was a benefit, not a cost: bee-keepers provide pollination services for local growers of flowers and fruit. Because they are not paid for this service, there may be a socially less-than-optimal amount of bee-keeping.

Theory concerned itself mainly with asking what form government intervention should take. For instance, part of the trouble in the clean-air example is that nobody owns the air; if somebody did, polluters would not be able to dirty it with impunity. Traditional microeconomic theory stressed this link between *property rights* and efficiency. It is part of the government's job, on this view, to allocate property rights in an efficiency-promoting way.

Then, in 1960, Ronald Coase of the University of Virginia published "The Problem of Social Cost". Mr Coase argued that, as a rule, no form of government action is required to deal with externalities or public goods. There is no need for taxes, subsidies and public provision; and so long as property rights already exist, there is no need for energetic policies aimed at shifting them around.

The article caused a rethink in microeconomics, a rethink that is still going on. It spurred the growth of a distinct new branch of the subject, called "law and economics". And it converted many more economists to the liberal, anti-interventionist wing of their trade.

Choo Choo

Mr Coase's favourite case of externality was an American icon, the wood-burning locomotive—whose sparks, regrettably, were prone to set fire to farmers' fields. According to the conventional thinking, what matters in such a case is the allocation of property rights.

Suppose farmers have a right in law to enjoin the railway company not to set fire to their fields: the result is that the company will fit spark-suppressing equipment to their trains, and there will be less damage to the farmers' fields. Alternatively, if the company has an unfettered right to spray as many sparks as it likes, there will be plenty of damage to fields.

Mr. Coase asked if this analysis was good economics, and showed that it was not. His main point was simply that legal entitlements—property rights—can be bought and sold. They are commodities whose exchange can be analysed like that of any other. If farmers can legally insist that locomotives are spark-free, they can sell this right to the railway. If the railway is free to spark as much as it likes, farmers can pay them to reduce the sparks that locomotives emit.

Not only that, but the outcome will be the same in either case. Suppose farmers have a right to stop the sparks. If this right to emit sparks is worth more to the railway than stopping the sparks is to the farmers (because suppressing sparks is costly, say), then the railway will buy the right to emit sparks from the farmers, and the damage will continue. Suppose instead that the railway is entitled to emit sparks—but that this right is still worth more to the railway than to the farmers. In that case, the right will not be sold, and the damage will continue.

There is one difference. The initial allocation of property rights affects the distribution of income; in other words, if you own something, you are better off than if you do not. But the allocation makes no difference at all to the amount of resources devoted to suppressing sparks. Economic forces ensure that the same efficient allocation will happen in either case. This idea is known as the *Coase theorem.*

Though quick to qualify it, people with a taste for economics usually react with delight to Mr Coase's insight. Others find it annoying: "All very well in theory, but how often do you see deals like that in practice?" It is a fair question, and it deserves to be taken seriously.

Inspired by Mr Coase, economists began to look more carefully than before for transactions in property rights. One of the most telling studies—because it scored a direct hit on the interventionists' favourite example—was a paper published in 1973 by Steven Cheung, then at the University of Washington: "The Fable of the Bees".

Down on the Apiary

Mr Cheung examined the bee-keeping industry in Washington. The state's farmers and bee-keepers might not have realised that they were coping with an externality, but that had not stopped them from organising a market. Mr Cheung wrote: "It is easy to find conclusive evidence showing that both nectar and pollination services are transacted in the marketplace: in some cities one need look no further than the yellow pages of the local telephone directory."

But he looked beyond the telephone book, and studied pricing and contracts in some detail. He found a surprisingly sophisticated pattern of prices (varying according to the sort of crop pollinated, the density of hives available, the risk of pesticides damaging the bees and so on). Mr Cheung showed that this pattern of pricing was, by and large, efficient.

In 1974 Mr Coase turned his own attention to lighthouses—an example of supposed *market failure* with an even longer pedigree than the fable of the bees. "The Lighthouse in Economics" sketched the history of lighthouses in Britain since the 17th century. It showed that lighthouses can be—and typically have been—provided by private enterprise.

In the early days, shipowners and shippers petitioned the Crown to let somebody build a lighthouse and charge a specified levy on the ships that benefited from it. These charges were collected at the ports by agents for the lighthouses. "The lighthouses were built, operated, financed and owned by private individuals, who could sell the lighthouse or dispose of it by bequest," Mr Coase found. "The role of the government was limited to the establishment and enforcement of property rights in the lighthouse." Responsibility for lighthouses was later shifted to Trinity House, a quasi-public body, but lighthouses continued to be financed by "light dues" collected from ships, not from general taxation.

The Coase theorem and the further work it inspired have demolished the presumption that externalities and public goods automatically call for government intervention. But they have not replaced it with a presumption that the

market can always be left to get on with it. The work of Mr Coase and his followers has made almost all economists, whether broadly liberal or broadly interventionist, more reluctant to generalise. It has also suggested many lines of further research.

For instance, the Coase theorem admits that the market will fail if *transaction costs* are prohibitively high. As a result, economists are much more interested than before in correcting inefficiencies by reducing the costs of doing business; pursuing efficiency through cleverer and more ambitious regulation is definitely out of fashion.

Some critics have argued that the Coase theorem stretches the idea of transaction costs too far—to the point at which the theorem becomes true (but uselessly so) by definition. It is not much help to blame transaction costs for every market failure, as if that makes the failure somehow all right.

The theorem, and the model of competition it defends, are at their weakest when trying to account for deals struck between small numbers of transactors—in other words, when the assumption of many buyers and sellers does

All in the Game

The assumption in traditional microeconomics of many buyers and sellers is all too crucial. When agents are few enough for their decisions to affect others, they are bound to behave "strategically"—ie, take those effects, and the likely response of other agents to them, into account. In economics, such behaviour makes even the simplest transaction difficult to analyse. This is the task of game theory.

In most bargaining circumstances a deal can be struck that will satisfy all sides. But if there is no agreed way to settle on it, everybody may end up unhappy. The classic illustration is one of the simplest games: the Prisoners' Dilemma. Two prisoners are accused of a crime. The prosecutor tells them that if they both confess they will go to jail for ten years; if neither confesses they will get two years; if only one confesses he (the confessor) will get just one year while his fellow prisoner goes down for 20. If they can come to a binding agreement, the prisoners will both profess their innocence and be sentenced to two years. But suppose they cannot. Each prisoner will then see that—regardless of what the other does—he will be better off if he confesses. Both will confess and get ten years.

Recently game theory has made strides. Theorists can unravel the structure of extremely complicated games. New research also stresses empirical work, using controlled experiments to see how people behave in real bargaining situations. Fascinating stuff. Unfortunately, it is all too obvious that voluntary agreements among small groups need not be efficient; when the numbers are small, markets are prone to fail.

Source: The Economist.

not hold. This is not so much a matter of transaction costs as of the unpredictability of offer and counter-offer: it moves economics into the realm of *game theory*, where efficient outcomes cannot be taken for granted (see box).

Sceptics may be willing to concede on bees and lighthouses—and on many other examples hitherto thought to be market failures—but the case of clean air remains awkward. It is hard to see how any entirely voluntary, market-driven approach to environment economics could ever overcome, even in theory, the problem of free-riders. Even here, however, Mr Coase and his colleagues have forced economists to think harder about how to use market forces to achieve green ends, rather than resort too quickly to the blunderbuss of regulation.

12

Clearing the Air

What Really Pollutes? Study of a Refinery Proves an Eye-Opener

An EPA-Amoco Test Finds That Costly Rules Focus On Wrong Part of Plant

One Gigantic Culture Clash

Caleb Solomon

Nowhere has animosity between regulator and regulated been more acrid than in environmentalism and pollution control. But now, some signs of change and pragmatism are in the air.

"The adversarial relationship that now exists ignores the real complexities of environmental and business problems," said Carol Browner, head of the Environmental Protection Agency, at her confirmation hearings. Last week, she told the auto industry she favors flexibility in meeting clean-air goals.

As it happens, the EPA itself has been involved in a far-reaching experiment in finding new approaches to pollution control, one that has involved nothing less than a full-bore study of how best to regulate an oil refinery.

The study, launched four years ago as an unprecedented joint venture between the EPA and Amoco Corp., tested the goodwill of both sides. Enormous obstacles of mistrust had to be surmounted, as the two sides found that, in jargon and analysis, they literally didn't speak the same language. The study was almost doomed midway through when the EPA slapped a stern penalty on Amoco in an unrelated matter.

Less for More

Yet the project finally was completed—with startling conclusions. Among them: The refinery could achieve greater pollution reduction for about $11

million than it is getting for a $41 million expenditure required by current EPA regulations.

Equally unsettling: While that $41 million was spent to trap air pollution from the refinery's waste-water system, no controls at all were required—or yet exist—on a part of the plant that the study showed to emit five times as much pollution. It could be dealt with for a mere $6 million.

Why such miscalculations? Because, it turns out, nobody had ever actually tested to see how much air pollution the refinery was emitting, or where the pollution was coming from.

The Clinton-administration EPA is just beginning to consider the refinery study, known as the Yorktown Project, which is now winding up with a multivolume report that will call for such changes as tailoring a solution to each industrial facility. But Ms. Browner indicates she is sympathetic to many of its ideas. "If we were starting out today to develop an environmental program with all the knowledge we have today, we'd probably do it quite differently," she says in an interview. "What I'm absolutely committed to is making sure we can do the job we need to do in the least costly, most expeditious manner."

Serendipity Aloft

The spark for the rare EPA-industry joint study was a chance meeting of old acquaintances aboard a 1989 Chicago-to-Washington flight.

Debora Sparks grabbed the open seat next to James Lounsbury. They had been part of a Washington crowd that used to gather after work in the 1970s at bars along Pennsylvania Avenue. After some catching up, they began talking about their work: pollution, energy, regulation.

Though both had worked in the energy industry in the old days, now much had changed. Mr. Lounsbury was at the EPA. Ms. Sparks worked for Amoco.

They talked about the complaints of each side about pollution control, and how despite all the cost and effort much pollution went uncontrolled. The tenor of the in-flight conversation, recalls Mr. Lounsbury, was, "If we could be king and queen for a day, wouldn't it be nice if we could restructure the world of environmental analysis." They wondered if something might come of a joint look by regulator and regulatee at a particular pollution site.

When the plane landed, the two returned to their offices full of enthusiasm but unsure how to channel it. To Mr. Lounsbury at the EPA, the notion of working with an oil company was dangerous heresy. But he knew a midlevel regulator whose job was to look at new ways to regulate, and who had mulled the idea of a joint venture with an energy company. Mr. Lounsbury said he had a candidate.

As for Ms. Sparks of Amoco, "there was some part of me that worried about coming across as a flake," But she gently suggested an EPA joint venture.

"It was a hard sell in Amoco," recalls the company's vice president for environmental affairs, Walter Quanstrom. "Lots of people thought that opening the gates was stupid," because the regulators would crawl around a plant

and find problems. Yet within a few days, he told Ms. Sparks to begin developing a project to take a deep look, jointly with the EPA, at the pollution output and possible preventive measures at one of Amoco's facilities.

Soon, Ms. Sparks, Mr. Lounsbury and the midlevel EPA official Mr. Lounsbury had in mind, a quiet man named Mahesh Podar, began meeting at EPA offices and a Hardee's restaurant. They were stiff encounters in which "we sometimes used words that didn't mean the same thing," Ms. Sparks says. For Amoco, "risk" was a term of economics, dealing with issues like "efficiency and results," she says. To the EPA, she says, it was a four-letter word that meant political peril or health risk.

Mr. Lounsbury set some ground rules: At no point could a study recommend changing laws, altering permits at the industry plant that was studied, or overlooking any violations.

Amoco offered its Yorktown, Va., oil refinery. Soon, teams from Amoco and the EPA came together for their first formal meeting at Amoco's Washington office.

"The first three or four meetings," says Howard Klee, named to head the project for Amoco, "were what I envision the Vietnam peace talks were like when they fought over the shape of the table."

Neutral Corners

Amoco executives, the men among them wearing blue or gray suits and crisp white shirts, voiced concerns about being fined for violations the regulators might stumble over. EPA types, in less formal attire, retorted that "EPA is not in a position to offer the company a shield," said Mr. Podar, whom the EPA had named to head the project from its end.

Pleasantries were few. "The meeting would end and we'd go off to our respective corners," says Ms. Sparks.

One day, Amoco brought sandwiches and chips for the group, a small offering. Regulators each dropped a few dollars in an envelope and passed it across the table. They would not be bought.

The first barrier to overcome was language. Amoco executives kept referring to RVs, Amoco-ese for relief valves. An EPA staffer thought they meant recreational vehicles. The industry types also spoke of "pigging out the line." It turned out to mean cleaning a pipeline by pushing a scrubber called a pig through it.

Amoco was equally stumped by EPA jargon like "red border review." It meant the final review of an EPA rule before it was published in the federal register.

A Real Issue

After a series of these painful meetings, the group arrived, with some relief, at a genuine regulatory problem: They realized they didn't know precisely how to measure emissions from the refinery.

Surprisingly, this was new ground for both. The EPA, even though air-pollution-control is a central mission, doesn't often measure emissions from industrial plants. It enforces regulations spelling out what equipment a plant must have, with the belief that this will keep pollution low. It may check that a certain type of smokestack is a certain height for instance, or whether a water filter is in place. But these rules are often based on old or over-generalized information, and rarely allow for adjustment to individual cases.

Regulators from each of the pollution-control divisions—air, water and solid waste—visit plants every few years with long checklists. Too many missed checks may result in an order to modify the plant or in a fine. But to what extent the rules are actually reducing pollution at a given site—and whether they are doing so in the most proficient or efficient way—are normally not at issue.

Nor does the regulated industrial company generally measure actual pollution. It, too, focuses on the rules it must meet.

If the project was going to learn anything at all about the efficiency of current pollution-control efforts, it would have to devise ways to measure the pollutants given off by the refinery as a whole—fumes, fluids and solid wastes. Only then could it consider the best ways to keep them out of the air and water and soil.

Separate Fiefs

The Amoco executives were surprised to learn that the EPA officials regulating each of those three kinds of pollution seldom spoke to one another. They operated from separate offices, enforcing separate pollution laws and maintaining their own regulatory staffs.

It was for that reason that the EPA oversaw its end of the study from its policy office in Washington, away from turf-conscious division regulators. J. Clarence Davies, who headed the policy office, says that some within EPA were strongly opposed to the joint project with Amoco. "I suspect," he says, "that half the people in the EPA water or air office, the people doing the regulating, think they're the good guys going after the bad guys."

To measure air pollution, Amoco designed testing methods with the help of its regulatory colleagues. But the methods needed approval by the EPA's air pollution office in North Carolina. After several trips and many calls to the office in the spring of 1990, Amoco's Mr. Klee still didn't have what he felt was a definitive response. Finally, Mr. Podar, reading EPA tea leaves, said that the air office's neutral stance meant it had no objections.

It was a risky supposition. But it allowed work to continue.

So the group began measuring pollution. Forty wells were drilled to test the water all about the grounds, a few miles from where British troops surrendered in the last major battle of the Revolutionary War.

When winds prevented using a crane to put a test device atop a 130-foot smokestack, they built $5,000 of scaffolding around the stack, drilled a hole in the side and inserted a sampling probe. The data proved ambiguous, and they had to do it again months later, scaffolding and all.

Yorktown's main pollution problem is benzene, a carcinogenic byproduct of oil refining. For years, benzene-tainted waste water ran into pipes that led to an open-air treatment facility. Though laws passed in 1977 said substances like benzene needed to be controlled, it wasn't until 1990 that the EPA, which slowed its rule-writing during the Reagan years, finally drafted specific rules to contain benzene.

Based on them, Amoco in 1990 began building a $41 million enclosed canal and water treatment system that would capture the benzene vapors. Other oil refineries also had to build one.

But the Yorktown Project's extensive testing revealed that the EPA's basic assumptions in requiring such a system—assumptions based largely on a 1959 study of benzene emissions from pools of dirty water known as "separators"—were wrong for this refinery. Fumes and evaporation of benzene from the plant's dirty water was, in fact, 20 times less than the 1959 study predicted it would be.

The real benzene problem was at the loading docks, where fuel is pumped onto barges. Fumes released here carry 1.6 million pounds of pollutants into the atmosphere a year, the study found. The EPA rules didn't address loading docks.

Indicting Evidence

"It was like 'My God, a blind person could see this,'" says Amoco's Ms. Sparks, recalling when she first heard about the data. "This is what we believed in our hearts but never had the data to demonstrate."

In a way, it was also what some EPA people were secretly hoping for: evidence indicting the current rigid structure of checklists and often-outdated assumptions. "We didn't know as much as we thought we knew about what is being released to the environment," says the EPA's Mr. Podar.

Madeline Grulich, a Virginia environmental official who worked with the project, says, "Those were astonishing conclusions that the waste water was not the problem and that the loading dock was. At the time, loading docks weren't something regulators were even looking at."

By early 1991, the work group was ready for a show, and 120 people from the EPA and Amoco gathered at the Williamsburg Inn in Virginia. But a small problem arose. EPA's per diem expense limit was short of what a room costs at the sumptuous colonial inn. "In an aberrant moment," says Amoco's Mr. Klee, "I decided why don't we have EPA people and Amoco people share rooms."

Strange as the idea seemed to some, it helped to thaw the cold war. Deborah Hanlon of the EPA says her Amoco roomie turned out to be "a real blast." One night, Ms. Hanlon rounded up 10 Amoco and EPA people to go dancing at a country and western bar. "What was so exciting was not just the camaraderie," she says, "but it was like we were all on the same team."

At one workshop during the conference, people had to think about being a vegetable, then tell the group what vegetable they would be. One

Amoco executive was a carrot, because most of him was underground and he revealed little.

By the final night, Mr. Klee says, the EPA attitude seemed to be, "Gee, you don't all have horns." The Amoco consensus? "Wow, not everybody at EPA was walking around with a pair of handcuffs."

Sudden Setback

But shortly after the conference came an episode that shook Amoco's faith.

The EPA, describing a "nationwide crackdown to enforce lead laws . . . with particular emphasis on high blood levels in children," hit Amoco's Yorktown refinery with a $5.5 million fine. Virtually everyone from the oil company working on the joint project—and a few people from the EPA contingent—thought it was retribution for getting too cozy.

Gordon Binder, who was chief of staff to then-EPA Administrator William Reilly, doubts that Amoco was targeted. But "it raised a very real dilemma," he says. "When you're working with industry cooperatively, shouldn't you reward good behavior? At the same time, you've got your established procedures."

In any event, the carefully nurtured trust had been shattered. With the project in jeopardy, Mr. Reilly picked up the phone and, in a move with virtually no precedent in environmental regulation, called Amoco's chairman, H. Laurance Fuller in Chicago. Recusing himself from any further dealings on the lead fine, Mr. Reilly said he was sorry Amoco hadn't received any warning and hoped it wouldn't pull out of the Yorktown Project.

Although the call patched up a lot, "there was awkwardness in the air" at the work group's next meeting, Ms. Sparks says. "It was a little like finding your spouse cheated on you, and it takes time to get over it." But Amoco people, seeing that their EPA counterparts were also troubled by the fine, grudgingly moved ahead with work on the common goal of seeking a way to cut the loading-dock benzene releases the study had uncovered. And in September 1991, the team finally began writing the Yorktown Project's report.

Air Attack

Then, EPA's North Carolina air office—the one that didn't give a definite answer when asked to rule on the appropriateness of the test method—weighed in.

"They tried to submarine the whole thing," says a senior EPA official. "It was ludicrous that a minute before midnight they complained about technical problems they could have addressed" more than a year before when Mr. Klee had pressed them to approve the testing procedures.

The air office now said that the testing methods were improper, and that the conclusions drawn from that data were too broad.

The EPA's Mr. Podar,—who says his Buddhist beliefs don't allow him to get angry, says simply: "The air objections unfortunately came later than I would have liked."

The EPA's acting assistant administrator for the air office, Michael Shapiro, contends the tardiness wasn't sinister but merely bureaucratic, reflecting the EPA's difficulty coordinating its various offices. In any case, senior EPA officials arrived to arbitrate. After difficult negotiations, they ruled that the air office's objections didn't change the fundamental findings but only modified them in some instances, and the project should proceed.

Even with that, there was frustration at Amoco. Armed with study data showing the waste-water plant's benzene emissions were only a tiny fraction of what the EPA had assumed them to be, the company petitioned in early 1992 for an exemption to rules requiring it to complete its massive sewer system. EPA said no—there was no procedure to waive existing environmental laws and regulations, even if they were contradicted by an EPA-sanctioned study.

Prescribed Remedy

As for the loading area that the study had fingered as a worse culprit, the group decided that controlling its benzene fumes would take a special two-nozzle hose. The second nozzle would suck in escaping fumes, and pipes would carry them away. Cost of the system: about $6 million.

The group also agreed the refinery could stand about $5 million of other modifications, like new smokestacks, extra tank seals and cooling equipment for open-air sludge ponds. One Yorktown sludge pond, the study showed, emitted twice as much hydrocarbons as the EPA's rules assumed. The low-cost solution: lowering the pond's temperatures.

Late last year, Amoco completed its high-tech water-treatment system. Building that costly facility (something many other refineries have had to do over the past two years) brings Yorktown current with environmental laws. The plant now controls the modest output of benzene fumes from its waste water.

Five times that much benzene still rises from the refiner's docks. "It's not required to be controlled, so it's not," says Chris Klasing, an Amoco manager.

EPA officials concede the point. The Yorktown study points to "potential opportunities" for better, cheaper pollution control, says the agency's Mr. Podar, but "we must confirm them before we make national policy." EPA officials say new regulations to control benzene at loading docks should be drafted by the mid-1990s.

Winding Down

The final Yorktown report is nearing completion. The volumes done so far make the basic argument that each plant is different, and each requires unique pollution solutions. They say only exhaustive testing at each plant will accurately tell what needs to be cleaned up.

Short of rewriting laws like the Clean Air Act, there is little hope for immediate, far-reaching change—such as setting a benzene maximum and letting a plant meet the goal any way it wishes. If Yorktown cuts pollution at its

loading dock or the EPA requires it to do so, that doesn't mean the agency would let Yorktown out of any requirements at its waste-water plant, even if they were based on faulty assumptions. Says Mr. Davies: "You invest so much in terms of time, money and political chits in arriving at one of these regulatory decisions that to go back and change it is something nobody wants to do."

Still, there are signs that EPA regulation is evolving. The air, water and solid-waste offices talk more to each other, as Yorktown's report recommends. And EPA Administrator Browner says, "The idea that one solution works in every situation is something we've probably passed beyond, and we need to recognize that. We need to become more flexible."

As the rare industry-agency joint venture winds down, many of its participants have moved on. Amoco's Howard Klee and Debora Sparks both have new assignments, as do the EPA's Jim Lounsbury and Mahesh Podar. Summing up his experience, Mr. Podar says, "Some of my colleagues may not agree, but Yorktown shows that EPA and industry can work together. You *can* find more effective ways to meet environmental objectives."

Ms. Sparks, whose spotting of Mr. Lounsbury aboard the 1989 flight led to the project, even feels a certain ennui, as if a precious union has ended. "You know," she says, quietly, "I should call Mahesh and Jim. I haven't even wished them a happy New Year."

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13

A Brief Guide to Innovative Techniques

Kathleen A. Getz

Marketable rights

Distributing a limited number of rights to scarce resources that private parties can then buy, sell, or trade as market needs dictate. This can remove the government from difficult, contentious, and lengthy decisions about who can "best" use the limited resources.

Informal disclosure

Requiring companies to disclose information about the negative externalities they create. Disclosure can replace governmental sanctioning with stakeholder-determined and implemented sanctioning.

Economic incentives

Using fees or subsidies (rather than government-enforced standards) to encourage private sector achievement of regulatory goals. This approach removes the government from having to eliminate or directly restrict the unwanted activity, but creates an incentive for the private sector to limit the activity itself.

Performance standards

Replacing regulations that specify the exact means of compliance (usually detailed design standards) with general targets that the regulated firms can decide how to meet. Performance standards reduce compliance costs and provide regulated firms more flexibility and discretion to discover new and more efficient compliance technologies.

Compliance reform

Replacing or supplementing strict governmental monitoring and enforcement with market-oriented mechanisms including third-party compliance monitoring, penalties that reflect the degree of non-compliance, and supervised self-certification. Such measures can improve compliance incentives while curtailing costs to the taxpayer.

Voluntary standards

Relying on regulatory standards developed by third parties or the regulated firms themselves. Cooperating firms may reach agreement faster than government procedures will allow, and private technical knowledge can be applied directly to the problem at the outset.

Tiering

Tailoring regulatory requirements, usually record-keeping and reporting requirements, compliance responsibilities, and the meeting of eligibility requirements for government funding programs, to fit the size or nature of the regulated entity. This can reduce the disproportionate burden that falls on small business and other entities without forfeiting regulatory goals.

14

Regulation Diary

Instructions: For one day, keep a detailed diary of your activities. Write your activities in the first column. Leave the second column blank. Bring the diary with you during class period #6. We will use student diaries during our discussion of government regulation.

	Activities (complete before class)	**Regulations** (leave blank until class)
6:00 A.M.		
7:00 A.M.		
8:00 A.M.		
9:00 A.M.		

10:00 A.M.

11:00 A.M.

12:00 noon

1:00 P.M.

2:00 P.M.

3:00 P.M.

4:00 P.M.

5:00 P.M.

6:00 P.M.

7:00 P.M.

8:00 P.M.

9:00 P.M.

10:00 P.M.

11:00 P.M.

12:00 midnight

15

Lobbying

Thomas F. Eagleton

I. Introduction

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.
>
> —*First Amendment to the United States Constitution, adopted December 15, 1791*

> A landed interest, a manufacturing interest, a mercantile interest, a money-eyed interest, with many lesser interests, grow up of necessity in civilized nations and divide themselves into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation and involves the spirit of party and faction in the necessary and ordinary operations of government. . . . By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.
>
> —*The Federalist* No. 10, 1787 (James Madison)

Two hundred years have passed since those words were written, and the reality of petitioning the government today is quite different from what Madison imagined. Tucked away in the U.S. Capitol building is a 20-by-50-foot corridor, just outside the Senate chamber. Like other corridors in the Capitol building, this one is ornately decorated with a tiled floor and murals on the ceiling. Eight fluted columns scale its height. Two banks of elevators open into this space, delivering senators to the chamber. Sometimes called "Gucci Gulch" by detractors, this is the lobbyist's domain.

Through a pecking order based on seniority and clout, lobbyists arrange themselves in this corridor to meet senators. The pillars nearest the chamber are the most coveted spots. Evie Dubrow, longtime lobbyist for labor's AFL-CIO,[1] has worked in the Senate long enough (since 1958) to leave a smudge on "her" pillar at shoulder height. Her patented lobbying tactic is "the look," which is unavoidable and makes senators feel guilty when they vote against her, or like a darling son when they vote with her. Her other tactic is hard work, with 15-hour days during which she may talk with as many as 30 senators.

Tom Korologos, president of Timmons and Company (TCI), a lobbying firm that represents some of America's largest corporations, occupies the pillar opposite Dubrow. Always ready with a smile and a joke, Korologos constantly paces the corridor, buttonholing senators. He knows all but two or three of them by first name, and is often called the "101st senator." Of the 25,000 (or even 80,000 according to one recent estimate)[2] lobbyists working in Washington today, Korologos is one of the best, according to a *National Journal* survey of lobbyists, legislators, and staffers. His was the only name on the survey's "best" list that did not appear on its "most overrated" list as well.[3] His knowledge of the Senate is so thorough that the White House often calls on him to help them steer tough nominations through the Senate confirmation process. Korologos aided nominees such as former Attorney General Ed Meese and Supreme Court Chief Justice William Rehnquist. Korologos also advised Judge Robert Bork, during his confirmation hearings for the Supreme Court, to battle the Senate Judiciary Committee over every opinion, article, and speech Bork had written. Korologos's advice may have backfired in this case, but he still holds the mystique of being a mover and a shaker. Although his excellent reputation and special knowledge of the Senate make him unusual, in most respects Korologos typifies the lobbying profession overall.

During a controversial vote, Korologos and Dubrow may be joined by as many as 50 other lobbyists who jam the corridor and focus the power of the American lobbying profession in this 20-by-50-foot space. For better or worse, this is how the First Amendment right of petition is professionally exercised.

Business and the federal government have sought to influence one another since 1789.[4] Both parties consider their interaction vital. Business must have timely, reliable information about government activity and be able to communicate its concerns and desires to Congress and the executive. Government officials, in turn, want to know how a proposal will affect a particular industry, the national economy, and their states or districts. Despite having access to extensive research and analytical resources, government officials still need outside sources of information and expertise. Free enterprise has responded to this demand for business-government communication and influence with the huge and growing lobbying industry.[5]

Lobbyists have a bewildering mix of titles and represent a wide range of human interests, but they share two fundamental functions: the transfer of timely, accurate information between their clients and government, and the advancement of client interests in Washington, D.C.

II. History

The right of citizens to petition their government probably began in the sixth century B.C., when the Athenians allowed an aggrieved citizen to have his case pleaded before the state by a third party.[6] The English Magna Carta granted the nobility the right to petition the throne. America's first lobbyists included merchants and landowners interested in preventing drastic economic and social changes in the newborn nation. After returning to private life, Alexander Hamilton, on behalf of commercial and manufacturing interests, lobbied Congress in 1800 to pass a program of tariffs, subsidies, and lending procedures.[7] Hamilton also helped organize a business association—the Philadelphia Society for the Promotion of National Industry—to further advance the interests of commerce and manufacturing.[8]

During the first half of the nineteenth century, the ranks of special interest advocates in Washington swelled. Lobbyists for hire set up shop, soon earning well-deserved reputations for shady dealings and disreputable practices.[9] Government officials, however, were not always the prey. In 1833, for example, New Hampshire Senator Daniel Webster wrote to Bank of the United States President Nicholas Biddle: "My retainer has not been renewed or refreshed as usual. If it is wished that my relation to the Bank should be continued, it may be well to send me the usual retainers."[10] Senator Webster received an estimated $30,000 in retainer fees from the bank in return for dedicated and unwavering support. The term "lobbyist" was coined during this time, as newspapers chronicled the activities of "lobby-agents" advancing special interests before the New York Legislature in Albany. By 1832, the term was widely used and shortened to "lobbyist."

The number of special interest groups in Washington grew during the 1800s. By the mid-nineteenth century, the National Association of Cotton Manufacturers, the United Brewers Association, the American Medical Association, the Bible Society of America, the American Peace Society, and the Children's Aid Society had become permanent fixtures in the halls of government.[11] The two most dominant lobbies of the time, however, were the railroad and farm interests. The railroads won so many victories that one student of the time called the results the "great railroad ripoff."[12]

By the 1920s, lobbying still was considered less than honorable. During this time, Congress investigated efforts by utilities and armament makers to obstruct both pending legislation and administrative policy. One inquiry disclosed that some "90 percent of the 300 to 400 lobbying associations listed in the Washington telephone directory were 'fakes' whose aim was to bilk unwary clients."[13] One of these ersatz lobbyists received $60,000 in one year by simply writing to his clients each time a piece of legislation favorable to their business interests passed the Congress, claiming sole credit for passing the law.[14]

After Franklin Roosevelt became president in 1933, the government began to recapture the initiative from lobbyists. The New Deal profoundly reshaped government policy making, and attracted new interests to Washing-

ton. FDR's changes forced lobbyists to become more resourceful. But lobbyists soon embraced the New Deal as a way to enhance their livelihood.

A. The Federal Regulation of Lobbying Act

In 1946 Congress passed the Federal Regulation of Lobbying Act, its first and only major law on congressional lobbying. The legislation, still on the books, governs anyone who "directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid" the passage or defeat of any legislation before Congress.[15] Persons falling within the scope of this law must register with both the secretary of the Senate and the clerk of the House of Representatives and file quarterly reports detailing their activities, receipts, expenditures, and interests.[16] The law in no way restricts or limits lobbying, but simply requires the disclosure of such activities. Indeed, any law that restricted the advocacy aspect of lobbying would be challenged on constitutional grounds.

The reporting and disclosure sections of the 1946 law withstood a constitutional challenge in 1954. In *U.S.* v. *Harriss*, the Supreme Court upheld the law by a 5–3 margin, but sharply narrowed its scope. The resulting law was so weak that today only one lobbyist in 10 bothers to register at all, and those who register disclose so little information as to be useless at best and misleading at worst. What began as a poorly drafted law was further eroded by the Supreme Court. As a result, the 1946 Act has these shortcomings:

1. The law only covers lobbying directed at Congress.
2. The law only applies to organizations or groups whose principal purpose is lobbying. As a result, many organizations that conduct extensive activities to influence Congress—corporations, ideological and issue groups, trade associations—are exempt from the provisions of the act because their principal purpose is something other than lobbying. The law also does not apply to organizations or individuals who spend their own money on lobbying activities.
3. It does not cover the panoply of contacts that lobbyists have with Congress. In fact, the Court held that the act applies only to "lobbying in its commonly accepted sense—to direct communications with members of Congress on pending or proposed federal legislation."[17] Under this extraordinarily narrow interpretation, most lobbyists consider the legal definition of lobbying to cover only face-to-face meeting between a registered lobbyist and a member of Congress to discuss a specific piece of legislation.
4. No governmental entity is empowered to investigate or enforce compliance with the law. The secretary of the Senate and the clerk of the House are responsible only for receiving the reports of registered lobbyists.

Spurred in part by the revelations of Watergate, Congress made several attempts to toughen the law in the mid-1970s. Those efforts peaked in the

post-Watergate 94th Congress (1975–1976). Because of differences in the House and Senate versions of the bill—definitions of who was a lobbyist, types of lobbying activity, and thresholds of activity—Congress was unable to reach a compromise. In their efforts to kill the legislation, some lobbyists would advocate the Senate bill when talking to House members, and the House bill when talking to Senate members. Both bills died when Congress adjourned at the end of 1976.

In the 95th Congress, the House again passed a lobbying reform bill, but in the Senate, the bill, as *Time* magazine put it, "was promptly consigned to imminent death or limbo by the lobbyists."[18] Since that time there has been little congressional interest in lobbying reform.

B. Business and the Growth of Lobbying in the 1960s and 1970s

After World War II, the attitude of business toward government, and by extension toward lobbying, became one of disdain and neglect. American business, the mighty economic engine that had won the war, felt it could manage the nation's economic affairs without government interference. The Washington corporate office, in the words of Tom Korologos, became the place where management would "send [the boss's] son-in-law to get him out of their hair."[19]

Business disdain for Washington was transformed by political and international economic events of the 1960s and 1970s. Two primary forces fueled the change: the rapidly expanding, activist federal government that created new areas of regulation affecting business, and a changing global economy which turned hostile to U.S. interests. The results of these changes on business involvement in Washington were dramatic. Ford Motor Company, for example, staffed a three-man office in Washington during the early 1960s. By 1978, Ford's "government relations" contingent in Washington had grown to 40.[20] This increase paralleled the growth in the number of federal regulations governing the manufacture of automobiles—Ford's primary business.

According to a former U.S. Steel employee, the steel industry underwent a similar transformation:

> U.S. Steel had its first Washington office starting back in World War I, but until the late 1950s there were no lobbyists. In October of 1958, Bethlehem Steel sent its first legislative representative. I arrived in Washington shortly thereafter. By the mid-1960s, Armco and Republic had lobbyists, and the American Iron and Steel Institute, which was headquartered in New York, had hired Washington lobbyists. [In 1981], more than a dozen steel companies have lobbyists here; Bethlehem alone has fifteen.[21]

The rise of steel industry lobbying tracks closely with the rise of foreign competition in this field. As a result of this newly found reliance on lobbyists by business, estimates of the total number of lobbyists in Washington ranged as high as 8,000 by the mid-1970s.[22]

In the 1960s and 1970s, a series of congressional reforms greatly opened Congress to the public and diffused power far beyond the coterie of commit-

tee chairmen and party leaders. The reforms made subcommittees more important and their chairmen more powerful. Hearings were opened to the public and staffs expanded dramatically. This shift in power represented a major change. As Tom Korologos characterized the early days, "you could talk to Wilbur Mills, Russell Long, and Lyndon Johnson and you'd have an oil policy."[23]

These reforms not only changed the way Congress worked, they fundamentally altered the way lobbyists approached their jobs. Previously, a lobbyist needed only to persuade a handful of powerful legislators. People like Clark Clifford, the quintessential well-connected Washingtonian, could maintain small, very personal law practices, and succeed through their ties to a small inner sanctum of legislators. After the mid-1970s, the reforms made it necessary to deal with many more congressmen and senators. Lobbyists needed more troops and more resources. Thus, by 1980 their ranks had grown to at least 15,000[24] and to more than 25,000 today.[25] Add in over 60,000 licensed lawyers in Washington, many of whom do some lobbying, and you see that lawyers and lobbying are to Washington what oil and gas are—or once were—to Texas.

III. Lobbyists Today

Lobbyists have many titles: lawyer, consultant, governmental affairs specialist, public relations officer, governmental representative, legislative consultant, strategic conceptualist, and, yes, even lobbyist. They perform a bewildering mix of functions: Some only manage direct-mail campaigns, some develop grass-roots support, others only do face-to-face lobbying of Congress and the administration. There are subspecialists: Some only work in the Senate or, further, only on Democrats in the Senate. Some handle media campaigns—setting up news conferences and news events, writing and placing Op-Ed pieces in newspapers, planting stories, preparing press releases, designing and placing ads. Others write testimony, represent clients before regulatory agencies and the courts. Some are available for the vaguely defined job of "strategic planning" (how to maneuver in Washington). Some specialize in grass-roots organizing efforts.

The demands of such a multifaceted profession are costly. Representation of special interests is big business. According to recent estimates, lobbyists spend about $1.5 billion each year to influence Congress.[26] An equal amount is spent on coordinated efforts to influence public opinion. That $3 billion covers the costs of the 25,000-person Washington army, campaign contributions, direct mail, issues research, polling, market research, door-to-door canvassing, grass-roots campaigns, phone banks, and computers.

The funding comes from a variety of sources. Some lobbyists work for a single company out of its Washington office. Others work for trade associations—organizations representing a number of individual companies sharing a common interest. Some lobby on behalf of a number of clients—the so-called "hired guns" or "designer lobbyists."[27] Many such individuals are lawyers who generate a large percentage of their income not through legal

work, but through lobbying. Others, like Tom Korologos, are nonlawyers with governmental experience or expertise in a specific area.

It should be noted that lobbying is not simply the preserve of the "venal interests." Harvard, Yale, Princeton, Stanford, and Washington University in St. Louis, for example, have Washington lobbyists. Missing children, cancer researchers, hospitals, teachers, and even television preachers have Washington lobbyists. Georgetown University assigns two Jesuit priests to lobby Congress. Even faceless citizens opposed to Donald Trump can band together to lobby against the giant developer.[28]

Many lobbyists follow the career path of Korologos, who came to Washington in the early 1960s as press secretary for Republican Senator Wallace Bennett of Utah. After nine years with Senator Bennett, Korologos moved to the Nixon White House, joining the Congressional Liason staff. This office serves as the president's in-house lobbying team on Capitol Hill, and Korologos's years of experience with Bennett and his colleagues on Capitol Hill gave him valuable insights into what makes the Congress work.[29] Korologos left the White House after five years to open TCI with another member of the Congressional Liaison team, Bill Timmons. Their venture was a novel one; few firms used their lobbying skills as the basis for attracting clients.

Korologos is a specialist, working exclusively and directly with decision makers in the Senate. He does not engage in media campaigns, grass-roots lobbying, or direct mail. He does not represent his clients before regulatory agencies or courts. In his K Street office, he has a sign that may have hung once in a Capitol Hill elevator. It reads, "SENATORS ONLY," and it sums up what Korologos does. He expands:

> My expertise, and it's the only thing I know in the whole world, is the Senate. I don't go to the House. I don't even park over there. I'm strictly a Senate creature. I live and breathe and eat and talk Senate.[30]

A. What Makes a Good Lobbyist?

Credibility is perhaps a lobbyist's most essential asset, his most powerful weapon, and his most jealously guarded possession. It means having a reputation for being straight-forward, for providing accurate information, and above all for not misleading decision makers. If a member of Congress is embarrassed by a lobbyist, that lobbyist, his organization, and his clients are discredited not only with that particular member but with his colleagues and others as well. Korologos puts it this way:

> In this business, you can't afford to make the same mistake once. One mistake and you're finished, you're Typhoid Mary. You might as well go home and open a gas station. . . . The worst thing you could do to me would be to go up to the Hill and say, "You can't trust Tom's numbers." On widgets, on oil, on whatever it is. . . . If a client gives you bum information or a lawyer miswrites something or a computer is wrong . . . you never let that last. You never let it last longer than five minutes after you find out about it. I have gone so far as to phone a senator at the airport to say, "That stuff

I gave you this morning had an error in it. Here's what it should have been. . . ."[31]

A good lobbyist forges and maintains good personal and working relationships with members of Congress and their staffs. A lobbyist needs all the friends he can find on Capitol Hill and throughout the federal bureaucracy. A good lobbyist can talk about things besides business—some of the best lobbyists are some of the best joketellers, raconteurs, and tennis players in Washington. Friends are made by taking the time to learn about members' backgrounds, about their staffs, about interests and diversions. A lobbyist builds friendships by visiting a member or his staff when he does not need assistance. Former Congressman Tony Cochio (D-California) has said of TCI lobbyist Bill Cable: "Three out of four times he talks to you not about lobbying, but about sports, or tennis—I play a lot of tennis with him—or your family. He's a friend, a sincere friend."[32]

Successful lobbyists do not overlook the importance of a decision maker's staff. Staffers often act as their boss's surrogates, and some staffers carry great weight in shaping the opinions of their bosses. Contacts among staffers (both on a committee staff and on a senator's personal staff) also allow the lobbyist to develop an intelligence network that informs him of the myriad activities going on in Washington.

A lobbyist's clientele can be a powerful tool as well. In Congress certain organizations are influential with certain congressmen and a few carry clout with almost every member. The reasons vary, but most often clout is based on the organization's operations in a member's state or district. Congressmen pay attention to organizations with facilities in their districts. Not only do employees and members vote, but they can often be turned out as campaign workers. The National Rifle Association is perhaps the epitome of such an organization. Almost every congressional district has a sizable number of zealous, motivated NRA members who can be instantly triggered to phone, write, or otherwise contact their representatives.

For independent lobbyists, the hired guns, there may be some client overlap. For example, when Korologos calls Senator Smith on behalf of Brown Shoe Co., Senator Smith may talk to him not so much because of the senator's interest in shoes or Brown Shoe Co., but because Korologos also represents the NRA with 30,000 members back home. This overlap also may help the lobbyist attract other clients.

Lobbyists who represent a popular client gain clout with decision makers. Having Lee Iacocca or the commissioner of Major League Baseball as clients gives Korologos extra access to members.[33]

The lobbyist, however, has sizable resources beyond names and faces. He and his clients supply members and their staffs with vast amounts of information, analysis, legislation, speeches, floor statements, amendments, strategy, and tactics. The largest and most diligent staffs cannot track the 12,000 separate pieces of legislation introduced in each Congress, not to mention the advisories, statements, press releases, regulations, revisions, and deci-

sions that the rest of the federal government churns out daily. A Washington observer literally could be buried under a daily avalanche of paper, trying to keep up with even a narrow specialty. Lobbyists often function as an extension of staff, sifting through this mass of information and calling to a member's attention things that otherwise might go unnoticed. Indeed, lobbyists and their clients can sometimes supply information unavailable anywhere else and do so faster than other sources. To quote Korologos:

> Lobbyists provide information—and senators seek information. Who better to give information on the oil industry than the American Petroleum Institute [API]? Yeah, they can call the Library of Congress, they can call the Energy Department, they can call the Interior Department and find out how much oil came in last year from Venezuela, but if they want to know how much came in last night, they can call API.[34]

Another tactic is to assist in drafting legislation, amendments, or floor statements. Most importantly, an on-the-ball lobbyist wants to make sure that the emphasis in the bill is just where his client wants it, that the amendment reads favorably to his client, or that the legislation includes (or excludes) his client. Furthermore, a lobbyist wants to know how each piece of legislation affects the businesses and constituents in each district. A lobbyist who can answer these questions has clout with legislators.

One of the most successful uses of this type of information was in securing loan guarantees for the ailing Chrysler Corporation in 1979. Chrysler lobbyists provided data to every member of Congress showing the economic effect of a Chrysler failure on their districts—number of jobs lost, amount of Chrysler-related money taken from the local economy. The potential repercussions were greater than appeared on the surface, because the lobbyists traced not only the economic web of Chrysler facilities, but showed how Chrysler's suppliers would be harmed. This vast web of interdependent businesses reached into almost every congressional district. This was essential to Chrysler's success in obtaining the loan guarantees,[35]

Korologos cites another example about a vote on a weapons system produced by a TCI client:

> We got information and data from our client on where every piece of the system was made. The seats, the radio, the tires, the boxes in which the tires came, and we found out that there was one senator who didn't know how he was going to vote. When I got a chance to talk with him I said, "Hey, Senator, what are you going to do on this vote today, what do you think is going to happen on this?" He said, "Aw, I don't know, I'm gonna be against it. I'm gonna vote to strike it." "By the way, did you know," I said, flipping through my loose-leaf, "that they make the radios in your state with x-hundred jobs and x-hundred dollars?" And he said, "My gosh, I didn't know that. Gee, thanks." And he voted with us. Three or four months later, at a Christmas party, he introduced me to his wife and said, "Honey, meet Tom Korologos, who saved me from voting against our constituents on that vote a few months ago."[36]

Lobbyists often raise campaign funds, which can be a valuable service to congressmen, especially since campaign costs exploded between 1974 and 1984. During that time, the average cost of a congressional race rose 800 percent for the Senate and 400 percent for the House.[37] Those costs continued to rise in 1986 and 1988, in part because of the greater use of media and high-tech campaign tools. As a result, senators have fundraisers every year during their terms and congressmen start raising money the day after the last election. Lobbyists contribute personally to legislative campaigns, persuade clients to contribute, and even help arrange fundraisers.[38]

What does this assistance mean to a congressman? Consider for a moment how a legislator must feel when faced with the daunting need to raise two or three million dollars for a campaign. Imagine how grateful such a legislator would feel if a lobbyist could raise $5,000 or more by making calls to a few of his clients. How would he feel if the lobbyist committed himself to raising $25,000 or agreed to chair an event that raised $100,000 for the candidate's woefully empty campaign treasury? Would the candidate remember the lobbyist who did any of those things? Certainly. Would he meet with the lobbyist and his clients at some later date to discuss a piece of legislation? Absolutely. Return their phone calls? Without a doubt. Would the legislator feel a predisposition to support the lobbyist's interests and those of his clients? Maybe. An obligation? The answers to those questions partially explain why fund raising is such a consuming activity in Washington and why it is probably the most controversial aspect of lobbying activities.

In addition to the financial pressures of reelection, many members of Congress suffer personal financial strains. Senators and congressmen earn $89,500 annually, a good salary, but one that can be stretched thin by the demands of office. To supplement their incomes, members of both houses are allowed to accept a limited amount of honoraria for appearing at functions and speech making (no more than $2,000 for any event). Lobbyists often encourage their clients to arrange such events and invite members to speak. The most popular speakers are members of influential committees—Senate Finance and House Ways and Means, in particular. Some organizations, however, tend to spread their largess around. In 1983, for example, 95 members of the House and Senate accepted the Chicago Board of Trade's invitation to tour their trading floor, and earned $122,250 for their efforts;[39] in 1984, the Tobacco Institute paid $126,192;[40] and in 1986, Paine Webber Inc. handed out $122,200 in honoraria to members of Congress.[41]

This financial relationship between Congress and special interests does not necessarily mean that Senate and House members are being bought. It does mean, however, that special interests and lobbyists pay for the opportunity to talk to members, show them their operations, and have them meet their employees.

B. What Do They Do?: Tactics and Strategies

Lobbyists use a variety of tactics to influence public policy. Among the most prevalent is coalition lobbying, in which several organizations temporarily

coalesce on a certain issue to achieve a specific objective. As a result, Washington is a scene of constantly shifting alliances among the multitude of interests. These temporary coalitions allow different parties to compromise on particular issues before presenting their cases to Congress or the president. Proposals from coalitions are more palatable to members of Congress, who like to know, for example, that both business and labor support an idea.

Another tactic is grass-roots lobbying, which involves motivating the public to support a certain cause. This can be accomplished successfully in a number of ways.

To the corporate lobbyist, perhaps the most identifiable and reachable segments of the public are company employees, stockholders, customers, and retirees. These people want success for their company and can be mobilized to advance its interests.

One of the most noteworthy examples was the 1983 effort to repeal withholding provisions on interest and dividend income passed by Congress in 1982. Banks and savings and loan institutions masterminded the grass-roots effort, which literally buried Congress in mail, postcards, and telephone calls. In every bank office, S&L office, and monthly statement sent to customers were preaddressed, prewritten postcards to congressional representatives that needed only a signature. The response to the campaign was enormous, particularly among senior citizens and retirees. Unwilling to incur the wrath of America's senior citizens, Congress repealed the law.

By all accounts, grass-roots lobbying is the most effective way to influence members of Congress. A senator or congressman will not often vote against what he perceives as the interests of his district or state. Most senators and congressmen are not anxious to be written up posthumously as profiles in courage. The lobbyist's task, therefore, is to convince the member that the lobbyist's interests reflect those of the member's district. Facts and figures can help, but the most impressive technique is for the lobbyist to arrange for a group of constituents to visit the member in Washington. Korologos calls this strategy the "Utah plant manager theory of lobbying" and explains it this way:

> Any senator is no more going to vote for something that I talk to him about than he is going to go to the moon unless it has an impact on his state, and the way he knows it's got an impact on the state is if he hears from people in his state. . . . When we don't know how a senator's going to vote, we fly a plant manager from his state back here, and the senator is bloody well going to see him. If he doesn't, the guy's going to go back to his plant, and his co-workers will say, "Where were you last week?" and he says, "Aw, I was in Washington, the son of a bitch wouldn't see me." Let that spread around a little bit. The political graveyards in this town are filled with great statesmen who forgot the folks back home. They forgot who sent them.[42]

A more difficult task is to manufacture a constituency for an issue where none is readily apparent. Using demographic targeting, direct mail, phone

banks, and door-to-door canvassing, it is possible to identify and motivate constituents on such arcane and complex issues as decontrol of natural gas.[43]

There are two masters of grass-roots lobbying: the senior citizens lobby and the American Israel Public Affairs Committee (AIPAC). If any senator or congressman hints of a possible constraint on the growth of Social Security or Medicare benefits, the senior citizens lobby, through various organizations such as the American Association of Retired Persons (AARP) or the National Council on Senior Citizens, can launch an effective grass-roots campaign with remarkable speed.[44] The *Wall Street Journal* describes AARP's clout as follows:

> After the Catholic Church, which institution in the United States has the largest membership? It's the American Association of Retired Persons, with 30 million members over age 50. One out of five voters is a member.
>
> That's why AARP is one of the most feared lobbies in Washington. Phil Longman, a former congressional aide who was fired from his job only days after criticizing AARP on television, told the *New York Times*, "When AARP's lobbyist shows up, it's like Darth Vader at the door—he tells people how to vote."[45]

So too can AIPAC mobilize on Middle East issues. According to one observer, AIPAC "maintains a grip on Congress rivaling that of any other pressure group in Washington."[46] In 1989, Senator Robert Dole of Kansas, the Republican minority leader, stated on television that "Israel has a lot of clout in this town [Washington]." When asked if Israel possessed too much clout, he answered, "Sometimes."[47] One writer describes the power of this group:

> AIPAC's success in building a bulletproof consensus on Israel's behalf on Capitol Hill is almost without precedent. If power in Washington can be measured by the degree to which one appears to be powerful, AIPAC is a veritable nuclear reactor. The White House and the State Department rarely make a move in israel's direction without first consulting it. Democratic presidential candidates ask for its reaction before they hire foreign policy advisers. An adviser to Walter Mondale once compared its clout to organized labor's. Some say that there are congressmen who won't tie their shoes without AIPAC's approval.
>
> Without a doubt, AIPAC is the most powerful ethnic lobby to emerge in recent American history. A case can be made that it is, in fact, the most powerful Washington lobby of any kind. All lobbies worth their salt, from the NRA to the Friends of the Earth, own some congressmen's votes on particular issues, but no lobby cuts as wide a swath in so many different circles.[48]

Even Japan has "grass-roots" in America.[49] In July 1987, the Toshiba Corporation of Japan made illegal sales of sensitive military technology to the Soviet Union. One House member branded Toshiba as the "Benedict Arnold of electronics." The next year, when the Congress was considering a big trade bill, a move was made to ban Toshiba from its lucrative $2.5 billion market.

The fact that Toshiba was more than just another Japanese company allowed the firm to fight back against the congressional proposal. Toshiba

America had operations in California, New Jersey, Tennessee, and Texas, employing 4,100 people; in addition, the company had contributed $3 million to political campaigns. But there was an even bigger weapon: Toshiba sold component parts to important American defense contractors. By having those powerful defense contractors and their lobbyists plead that "Toshiba is vital to our defense effort," the saving of Toshiba was well on its way to success. Toshiba also convinced American manufacturers of products such as microwave ovens and television tubes to declare that they, too, needed Toshiba components. As a result, the ban on Toshiba was dropped.[50]

Indirect lobbying is somewhat similar to grass-roots lobbying. Basically, it uses paid and free media to influence Congress by shaping public opinion on a particular issue.[51] Lobbyists in this field call news conferences, stage news events, provide the media with press releases on paper and on video tape, arrange interviews for their clients, and distribute ghostwritten opinion pieces and editorial material. They develop and create radio, television, and print advertising to generate public pressure on decision makers.[52]

Direct lobbying is the essence of the lobbying profession. The lobbyist visits the decision maker or his staff to present his client's case. Two ironclad rules govern this interaction. Make your case as persuasively as possible without being misleading, and be succinct. The great deal of preparation goes into a 10-minute meeting in a senator's office or a 30-yard walk down a hallway with a congressman. The lobbyist has to know what is most persuasive to this particular member on this particular issue at this particular time. Solving the equation requires a knowledge of the congressman, his district, and the issue, and good instincts for larger political considerations.

Lobbyists who excel at direct lobbying spend a lot of time at the offices on Capitol Hill. Charles Lopsen, a longtime lobbyist for organized labor, explains it this way:

> If you want to go hunting, you go where the ducks are. Therefore, I decided against using the telephone, as too many lobbyists are prone to do. Sure, it would save time. But I didn't and don't believe it succeeds like sitting with a person face-to-face. . . . I wore out a pair of shoes a month treading the halls of Congress to see members or their staffs at every possible opportunity. . . .[53]

Korologos adds:

> I spend as much time on the Hill as I can. I feel that's where my beat is, and in a lot of ways I'm a cop on the beat. . . . There are a lot of lobbyists around that make appointments and go in and see staff, but I hang around the elevators and the doors. If I need to see somebody, I'll hang out there and wait for a vote to occur or I'll look in the *Congressional Record* and see where the committee meetings are and go hang out outside the door there and wait for the meeting to break up, and have a chance to spend 30 yards with him to make my point. . . . By instinct and smell I can tell a little bit what's going to happen in legislation—whatever it is that's working. So, if I'm up there, watching over schedules, seeing when they're

going to bring a certain bill up, I can notify our clients that something is imminent.[54]

An example of the complex nature of lobbying and the influencing of policy formulation can be found in the political activities of the Reverend Moon's Unification Church. The Unification Church has established a vast network of political and media organizations aimed at influencing public policy:

Groups Linked Directly or Indirectly to the Unification Church[55]

Domestic Politics

The American Freedom Coalition—a Washington-based public policy and lobbying organization.

CAUSA USA and International—Confederation of the Associations for the Unification of the Societies of the Americas; a New York-based anti-communist lobbying organization.

National Committee against Religious Bigotry and Racism—a Chicago-based lobbying group.

The American Leadership Conferences—organized by CAUSA and the American Constitution Committee for American politicians and activists.

The American Constitution Committee—a Washington-based public policy organization.

Conservative Action Foundation—a Washington-based group of young conservative activists.

The Washington Institute for Values in Public Policy—a Washington-based think tank.

National Council for Church and Social Action—a charitable organization with chapters throughout the United States.

Foreign Policy

International Security Council—a New York-based think tank sponsored by CAUSA.

ICUS—International Conference on the Unity of the Sciences; sponsors annual conference for scientists and professors.

Professors' World Peace Academy—a group that sponsors meetings for professors from various countries.

International Cultural Foundation—a New York-based educational foundation that sponsors conferences and other events.

International Relief Friendship Foundation—a charitable organization based in New York.

Unification Church International—the Unification Church's nonprofit holding company.

Media

The Washington Times Corporation—publishes the *Washington Times, Insight* magazine, and *The World & I.*

News World Communications Inc.—publishes the *New York City Tribune, Noticias del Mundo* (Spanish-language newspaper with editions in New

York, Chicago, Los Angeles, San Francisco), and the *Middle East Times* (English-language newspaper published in Athens and distributed in Cairo); also operates the Free Press International news service.

Se Ge Ilbo—Segye Times, the self-described "sister paper" to the *Washington Times*, published in Seoul, Korea.

Sekai Nippo—Japanese newspaper.

Paragon House Publishers—a publishing company.

The American Freedom Journal—a monthly publication produced by the American Freedom Coalition.

World Media Association—a nonprofit educational foundation sponsored by The Washington Times Corporation and News World Communications, Inc.; it organizes annual World Media Conferences.

C. What Do They Want?

Lobbyists use these strategies to gain access, information, and ultimately influence. Access means getting a message to the right decision makers. A personal meeting with a decision maker is one form of access; buying a full page ad in the *Wall Street Journal* or a congressman's hometown newspaper is another. Both media deliver targeted messages, although most lobbyists prefer the eyeball-to-eyeball meeting. Information is synonymous with political intelligence. Knowing the preferences of legislators and the opposition helps the lobbyist shape his strategy. Being able to predict with some accuracy the outcome of a committee vote or the fate of a bill aids business clients in planning their future. As Korologos explains:

> What this is is a prediction business. I could put on a hat, be a swami with a crystal ball and be a lobbyist. Our clients come to us and ask, "What's going to happen?" And fill in a hundred questions after that. "What's going to happen with the tax bill, to Gramm-Rudman, is there going to be an excise tax?" These questions all impact on corporate decisions, and the clients want to know the answers. And so we make predictions based on a little bit of experience, a little bit of knowledge, a little bit of smell, a little bit of knowing what the pattern is going to be.[56]

To achieve influence, the lobbyist strives to create the most favorable predisposition possible with a decision maker. On a Senate floor vote, an experienced lobbyist can predict with accuracy the position of 90 percent of the body. Victory might be achieved by winning support from the undecided 10 percent. An effective lobbyist will have done whatever it takes to give those undecided members a predisposition to support his cause, even before he makes an appointment to see them. By knowing the senator or having studied him intimately, and by knowing his staff, the lobbyist will know further what is most persuasive to his interests, how best to present that information, and who is the best person to make that presentation.

When a vote arises on which the senator has no particular interest, enormous opportunity exists for the lobbyist who has done effective groundwork. In the Senate there may be 500 roll call votes each year. Perhaps 100 heavily

interest a member. The other 400 are up for grabs, and it is on these votes that a lobbyist can do his most effective work.

Influence, however, does not only mean that successful lobbyists get more bills passed than their colleagues. Lobbying is also the art of stopping legislation that would be damaging to clients. This negative form of lobbying is often difficult to isolate, but it is fundamental. Korologos explains it this way:

> Most of our successes are negative successes in blocking something. Congress does two things best—nothing and overreact. When Congress overreacts, client, you've got a problem. When they do nothing, client, you're winning. Most businesses want to be left alone, and we try to protect them from costly amendments, costly regulations.
>
> It's difficult to pass a law. I can list a minimum of 250 roadblocks that can be placed on a bill. It's very difficult to pass a bill and the founding fellows made it on purpose that way. The system is based on protection of the minority from a wild, rampant majority whim of the moment. Well, we bank on that, and what you do in this business is try to clear the red tape, clear the regulations, and present your case to the policymaker. And, if you've got any merit at all, he's going to listen to you, and you're going to succeed. Negative successes means stopping tax increases, stopping overregulation, stopping whatever whim some bureaucrat who's never been in business is trying to perpetuate on you.[57]

What does a lobbyist want? All he wants is influence. However, because of growth in lobbying activities, we can envision more government by stalemate. The 1988 session of Congress saw a classic fight on the issue of whether banks should be given new and broader investment powers. Of course, the big banks wanted such powers. Opposing them were the small banks, realtors, and insurance brokers who felt they would be crushed by the big banks. Consumer groups wanted some protective measures and the big banks said no to that. It was, in truth, the Super Bowl of lobbying. Result: colossal power versus colossal power—stalemate. This leaves the question of whether business can lobby itself to death.[58]

IV. The Future Of Lobbying

Lobbyists will persist under the present form of government. However, reforms may be enacted. For the immediate future, lobbying reform will probably focus on the "revolving door" syndrome. In 1988, the Senate and House passed legislation prohibiting former members of Congress and high-ranking staffers from lobbying their old colleagues for one year after leaving office. High-ranking officials of the executive branch faced one-year prohibitions on lobbying all federal agencies.

This bill was designed to cure the revolving door syndrome, in which people immediately begin lobbying their old friends and agencies after leaving government service. Former Reagan White House aides Michael Deaver and Lyn Nofzinger were convicted by federal courts of crimes in connection with such activities. Despite concerns with revolving door lobbyists, members

of the Reagan cabinet and the American Civil Liberties Union (ACLU)—on First Amendment grounds: freedom of speech and petition—opposed the bill and President Reagan vetoed it shortly before his term of office expired.[59]

Perhaps sometime in the near future another attempt at solving the revolving door syndrome will be more successful. It is also possible that future reform efforts will include attempts to regulate lobbyist expenditures and disclosure of income. However, to prohibit the inherent advocacy activities of lobbyists would almost certainly run afoul of the First Amendment, as the ACLU was claiming about the 1988 revolving door legislation. Reformers thus face the daunting task of reining in the expanding lobbying universe without infringing on constitutional guarantees in the process.

Regardless of what legislation may follow, the trend toward increased corporate involvement with the federal government will continue. As Tom Korologos explains, a company's survival depends on it:

> Get yourself a lobbyist just like you get yourself a doctor, just like you get yourself a lawyer, just like you buy a shirt. Look for quality, get what you can afford, do some research on it. How's their reputation? What does the city think of them? Are they blowhards, do their clients leave them after a short time? It's not so much how long they've been in business, that's not the criteria, but have they been in business a year, has there been any changeover on clients, have their clients been disappointed? Don't ever look at successes because nine times out of ten they don't win anything. You cannot measure a lobbyist's success by putting down on a piece of paper, "We last year passed sixteen bills and lost three." That's not the way the business works. Look at how many hearings *weren't* held. Look at how many bills *weren't* passed. You look for a guy with a personality, a guy who is willing to work late, who'll come to your office and get immersed in what you're doing. I genuinely say I would hire a lobbyist like I hire a lawyer, like I hire a doctor. You can't put it out for bids, any more than you can put a broken collarbone out for bids, but do some checking before you jump in. A lobbyist costs a lot of money and it's got to be well spent. Justify it to your stockholders or to your board.[60]

The bottom line is this: What happens in Washington today will have a fundamental impact on business organizations tomorrow. Businesses may not like Washington, but they had better know what is going on there and how the game is being played.

Discussion Questions

1. Does every sizable business need a lobbyist in Washington? If so, why? If not, why not? What are some characteristics of businesses that particularly need representation in Washington?
2. Chrysler, Anheuser-Busch, and all of Korologos's clients have full-time Washington offices. Why do they need him?
3. Consider the following hypothetical situation: You are the CEO of a Fortune 500-sized company. Your company's primary product is automobiles. You have a large (30 people) office, as well as several law

firms and a lobbying firm on retainer, in Washington. What areas of interest should your representatives in Washington be covering for you? What committees in Congress, what agencies and departments in the executive branch? What types of information need to be communicated between your company and its representatives in Washington? In what activities should your Washington representatives involve themselves?

4. The federal budget deficit is hovering around $150 billion. Congress reduced income taxes, so a tax increase is out of the question. The computer shows you could pick up $20 billion "painlessly" by raising excise taxes on liquor, wine, and beer. The CEO of Anheuser-Busch calls you in to direct the campaign to defeat the excise tax on beer. What do you do? Do you form a coalition with liquor and wine? How do you organize the grass roots? Do you incorporate an ethnic or racial aspect into the campaign?
5. A small or middle-sized company cannot afford a Tom Korologos. What can it do in the lobbying arena?
6. Do we need a new Lobbying Act requiring strict and detailed reporting of expenditures? What expenditures? Grass-roots expenditures?
7. Do we need strict laws prohibiting former high-ranking federal officials (both executive and legislative branches) from lobbying? Lobbying whom? How long should the prohibition last? Are restrictions on such activity constitutional?
8. Korologos works *pro bono* for the White House on important Senate confirmation matters. Is this a proper relationship?
9. AIPAC is one of Washington's strongest lobbying organizations. Should Americans of Greek, Irish, Hispanic, and Japanese descent all form lobby groups so as to influence American foreign policy decision making? Would this be a positive development in the formulation of American foreign policy?
10. Should restrictions be imposed on lobbying by foreign corporations or on foreign citizens like the Reverend Moon?

Notes

1. "A Capitol Hill Lobbyist Everyone Loves," *New York Times*, July 27, 1987. Evie Dubrow is officially vice-president and legislative director of the International Ladies Garment Workers Union, but her effectiveness is such that she is often called upon to lobby for the general labor agenda.

2. See George Melloan, "What to Do When Your Own Lobby Is Against You," *Wall Street Journal*, February 16, 1988.

3. "The Best-Known Lobbyists Are Often Seen . . . As Most Overrated," *National Journal*, September 14, 1985, pp. 2034–2035.

4. Although this case is limited to interactions between business and the federal government, many, if not all, of the general principles and concepts outlined in this case are applicable to business–government relations at the state and local levels.

5. For the purposes of this discussion a lobbyist is defined as follows: "An individual or organization who, in return for compensation, seeks to influence the actions of the government so as to advance the goals or interests of himself, his organization,

or clients." This is an extremely broad definition, but the range of lobbying activity is just as wide ranging.

6. M. I. Finley, *The Ancient Greeks: An Introduction to Their Life and Thought* (New York: Viking Press, 1963), p. 27.

7. Alvin Wolf, *Lobbies and Lobbyists: In Whose Best Interest?* (Boston: Allyn & Bacon, Inc., 1976), p. 12.

8. Ibid., pp. 12–13.

9. Ibid., p. 13.

10. Congressional Quarterly, Inc., *The Washington Lobby, 4th Edition* (Washington, D.C.: Congressional Quarterly Press, 1982), p. 1.

11. Wolf, *Lobbies and Lobbyists*, p. 13

12. Stuart Chase, *Democracy Under Pressure* (New York: Greenwood Press, 1968), p. 72.

13. Congressional Quarterly, Inc., *The Washington Lobby*, p. 38.

14. Ibid.

15. 2 U.S.C. Section 266 (1976).

16. 2 U.S.C. Section 267 (1976).

17. Guy Paul Land, "Federal Lobbying Disclosure Reform Legislation," *Harvard Journal on Legislation* (Spring 1980), p. 300.

18. "The Swarming Lobbyists," *Time*, August 7, 1987, p. 14.

19. Interview with Tom Korologos, February 20, 1986.

20. "The Swarming Lobbyists," p. 15.

21. George Esherick, U.S. Steel Director of Public Affairs, in "They Don't Get No Respect," *Common Cause* (December 1981), p. 23.

22. "The Swarming Lobbyists," p. 15.

23. Interview with Tom Korologos, February 13, 1986.

24. "The Law Choreographers: Tips from the Top," *District Lawyer* (July/August 1981), p. 23.

25. "Peddling Influence," *Time*, March 3, 1986, p. 35.

26. Ibid., p. 27.

27. When Guam had a problem, it could not afford someone like Tom Korologos. Instead, it hired a "boutique" or "designer" lobbyist for $8,000 per month. See Steven Waldman, "The Designer Lobbyists," *Newsweek*, April 4, 1988. See also Douglas A. Harbrecht, "John Zorack, A Lobbyist for Mom and Pop," *Business Week*, January 18, 1988.

28. Roger Lowenstein, "New Yorkers Fighting Donald Trump Forge Some Potent Weapons," *Wall Street Journal*, March 23, 1988.

29. Monica Langley, "Two Ex-Senate Staffers Lobby For Tax Breaks," *Wall Street Journal*, December 15, 1987.

30. Korologos, February 13, 1986.

31. Korologos, February 20, 1986.

32. "Peddling Influence," p. 35.

33. Korologos, February 13, 1986.

34. Korologos, February 20, 1986.

35. Alan Berlow, "Chrysler Aid Speeded by Broad Lobby Effort," *Congressional Quarterly Weekly Report*, November 17, 1979, p. 2582.

36. Korologos, February 13, 1986.

37. Ibid.

38. "Washington's Super Lobbyists," *Dun's Business Month* (August 1983), p. 38.

39. Brooks Jackson, "Lawmakers Got Record Fees in '83," *Wall Street Journal*, May 25, 1984, p. 58.

40. Brooks Jackson, "Interest Groups Pay Millions in Appearance Fees to Get Legislators to Listen as Well as to Speak," *Wall Street Journal*, June 4, 1985. See also Thomas B. Edsall, "Congress' Free Ride," *Washington Post*, June 14, 1987.

41. Brooks Jackson, "Fees That Lobbyists Routinely Pay Lawmakers to Get Acquainted Raise Questions About Ethics," *Wall Street Journal*, December 17, 1987.

42. Korologos, February 13, 1986.

43. Ann Cooper, "Middleman Mail," *The Influence Industry, National Journal*, September 14, 1985, pp. 2036–2041.

44. The elderly in America receive 60 percent of all federal nondefense benefits; see Paul A. Gigot, "Elderly Lobby Peppers the House on Health Bill," *Wall Street Journal*, May 6, 1988. Long-term health care was the key issue in the 1988 presidential primaries in Florida. See Joe Davidson, "Older People's Lobby Gets a Message Across to All the Candidates," *Wall Street Journal*, March 8, 1988; and John Tierney, "Old Money, New Power," *New York Times Magazine*, October 23, 1988.

45. "AARP's Catastrophe [editorial]," *Wall Street Journal*, October 2, 1989.

46. Jacob Weisberg, "The Lobby with a Lock on Congress," *Newsweek*, October 19, 1987, p. 46. See also Judy Sarasohn, "Jewish Lobby Treads Lightly," *Legal Times*, February 1, 1988.

47. Richard L. Berke, "Dole Suggests an Increase in Gasoline Tax to Help Pay Quake Costs." *New York Times*, October 30, 1989.

48. Eric Alterman, "Pumping Irony," *Regarche's* (March 1988).

49. Fujitsu, Hitachi, Mitsubishi, and other Japanese businesses operating in the United States have formed a trade lobbying association called the International Electronics Manufacturers and Consumers of America; see Bruce Stokes, "Foreign Owners," *National Journal*, September 19, 1987.

50. Robert A. Rosenblatt, "How 'Swat Team' of Toshiba Lobbyists Took on Congress—and Won," *Washington Post*, May 1, 1988.

51. Sometimes members of Congress are the direct targets of this indirect form of lobbying. In a March 1986 seminar on lobbying techniques, one participant explained how he placed a series of ads on pension reform to reach members of the House Ways and Means Committee: "A couple of people hung out in the parking garage for a few days to see what time the committee members generally got to work. We checked what stations their car radios were set on and bought spots on those stations in time slots thirty to forty minutes before they arrived at work."

52. See Stuart Auerback, "PR Gets Entrenched as a Washington Business," *Washington Post*, February 18, 1985. See also Mary Battiata, "Public Relations or 'News': Gray & Co. Blurs Boundaries," *Washington Post*, March 28, 1985.

53. Charles Lipsen and Stephen Lesher, "Vested Interest," *Washingtonian Magazine* (April 1977), pp. 166–167.

54. Korologos, February 20, 1986.

55. *Washington Post*, October 15, 1989.

56. Korologos, February 13, 1986.

57. Korologos, February 20, 1986.

58. Kirk Victor, "Recipe for Stalemate," *National Journal*, December 3, 1988. See also Kirk Victor, "Banking on a New Lobbying Strategy," *National Journal*, March 5, 1988; and George Melloan, *Wall Street Journal*, February 16, 1988.

59. Irwin Molotsky, "With End of Session in Sight, Congress Votes to Curb Lobbying," *New York Times*, October 20, 1988. See also Irwin Molotsky, "Ethics Bill Is

Inequitable. 2 Cabinet Members Say," *New York Times*, November 23, 1988; and Mortin Halperin and Leslie Harris, "On Ethics, Reagan Finally Did Right," *New York Times*, December 4, 1988.

60. Korologos, February 20, 1986.

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16

Suckers!

Jonathan Rauch

Washington's parasite class keeps growing and growing and growing and . . .

"Let us give this capital back to the people to whom it belongs!" cries Bill Clinton, in his inaugural address. Take government back from "the people who always figure out a way to prosper even as more Americans suffer," says former California governor Jerry Brown, during his 1992 presidential campaign. Take government back from the "permanent class of career legislators," writes the columnist George F. Will. Take government back from "the awesome power of the Washington *nomenklatura*," says Will Marshall of the Democratic Leadership Council's think tank in Washington. Everyone is getting into the take-government-back act.

Conservatives have always spoken of Washington as being, in some worrisome sense, out of control, but recently consternation has washed centerward. Sen. Robert Kerrey of Nebraska (like Jerry Brown, a 1992 Democratic presidential contender) talks grimly about the strangely self-referential, self-feeding quality of modern government. "We allow interest groups to create new bureaucracies and then the bureaucracies serve the interest groups," he says. Across Capitol Hill, Rep. Timothy J. Penny (D-Minn.) says glumly, "It's a control game we're playing now. It's an insider's game." From Penny and Kerrey and Marshall and Will and Brown and Clinton and others comes a chorus of demands to "give this capital back to the people to whom it belongs."

The issue at hand is not just the size and growth of government but the size and growth of the professional lobbying industry attached to and feeding upon government. It was said of the Soviet military complex that when we built, they built, and when we didn't build, they still built. Something similar seems to happen with lobbies: When government grows, they grow, and when government doesn't grow, they still grow, though maybe not as fast.

The take-government-back crowd assumes that, somehow, Washington can be restored "to the people." But what if they're wrong? Few have yet confronted this question: What if government *cannot* be "taken back" from the entrepreneurial professionals who increasingly dominate it? Emergent theory and postwar experience give reason to think that the infestation of parasites in Washington is ineradicable. Worse, the infestation isn't stable. It grows.

On this score, the facts speak without ambiguity. By all known measures, the transfer-seeking economy has grown spectacularly over the past 30 or so years, with no end in sight. The number of groups listed in the *Encyclopedia of Associations* more than quadrupled between 1956 and 1990, from 4,900 to more than 22,000. Those groups represent only a fraction of the total. The number just of environmental groups, including local cleanup coalitions and the like, is now estimated at 7,000; the number of gay groups listed in the *Washington Blade*'s resource guide grew from 307 in December 1990 to 405 earlier this year. Not all groups lobby, of course, but many do. Evidence suggests, indeed, that groups have become more likely to engage in lobbying; the proportion of trade associations based in Washington has been steadily rising, which suggests deepening political involvement.

Counting lobbyists is hard, but all counts show increases. The number of active lobbyists registered with the U.S. Senate has jumped from 3,000 in 1976 to around 8,000 last year; between 1961 and 1982, the number of corporations with Washington offices increased tenfold. The number of lawyers in Washington quadrupled between 1972 and 1987, from 11,000 to 45,000. And the investment in politics, as measured by real campaign spending, has tripled since the early 1960s.

One could go on and on this way. The data leave no doubt that the past several decades have witnessed explosive growth in the lobbying sector—a trend quite unruffled by the comings and goings of Democrats and Republicans, conservatives and liberals, Reagan or Clinton or whomever. Why?

At the heart of the problem are the curious internal mechanics of the goody-hunting industry, with its virus-like ability to convert the organs of government into factories producing more lobbies. To understand why this parasitic subeconomy grows and grows, ascend some steps in the spiral logic of lobbying.

1) Transfer seeking—the chasing of existing wealth—is inherently alluring to individuals yet inherently hazardous for society. The concept of transfer seeking (or "rent seeking," as professional economists more obscurely call it) is intuitively familiar, though its economic implications are not. For any individual, there are two ways to become wealthier. One is to do something productive. The other is to redistribute existing resources in one's own favor. From an individual's self-interested point of view, the two kinds of enterprise are more or less interchangeable, because either can make you richer. But from a social point of view, they are very different. If we all work, we create wealth, and society is better off. But if we all do nothing except try to get our hands in our neighbors' pockets, we will all be very busy, yet we will all eventually starve.

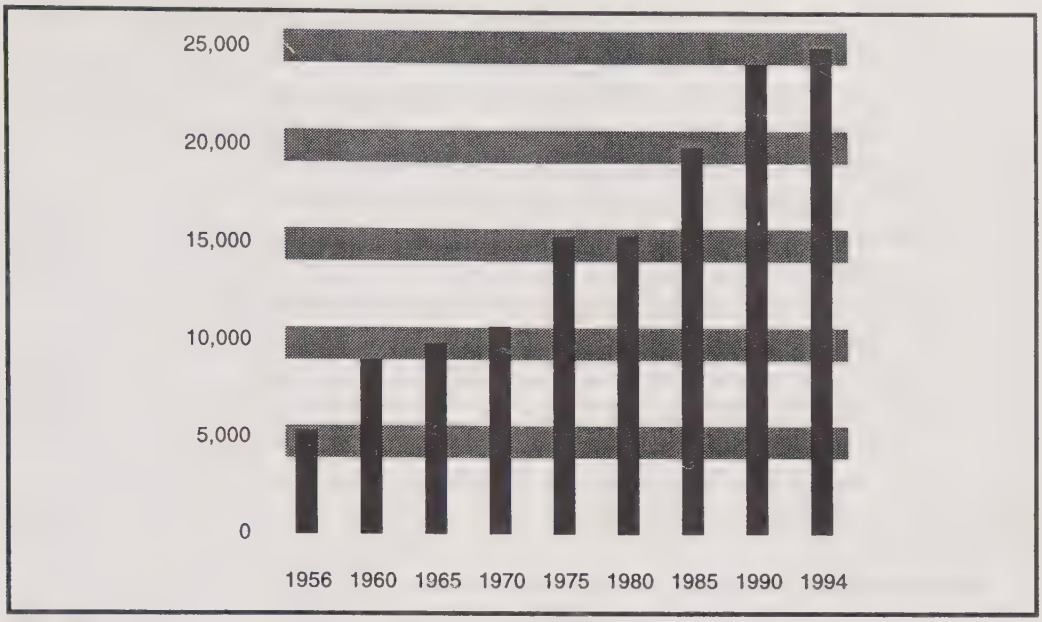

Figure 1
Number of Groups Listed in the *Encyclopedia of Associations*
Note: Figures prior to 1975 are estimated by the American Society of Association Executives.
Sources: Gale Research Inc., American Society of Association Executives

One major form of transfer seeking, theft, is prohibited. But not all forms of transfer seeking are illegal. Indeed, some large quantity of it is inevitable. We call it "lobbying," in the broadest sense of the word: pressuring government to give us things we value.

2) Any government that's strong enough to govern is vulnerable to entrepreneurial exploitation by lobbies—there's no getting around it. It is government's very power to be government that creates the market for legal transfer seeking—a point that deserves emphasis, because so many people refuse to face up to it. Inherently, government transfers and assigns resources, whether by levying taxes to pay soldiers or by setting patent rules. This power would be unproblematic, except that resources will always be contested, and one reason we have politics is to decide how to assign them. Some people daydream about ways to adjust the Constitution or otherwise fine-tune the process so that government is empowered to deliver only "wise" or "necessary" or "legitimate" benefits. But that's a tall order.

Was the Superconducting Super Collider a national-interest (or even world-interest) project? Or was it a pork-barrel handout for hard-lobbying scientists and harder-lobbying Texas construction contractors? Are the advocates of lower capital-gains taxes out to revitalize the economy, or to line their pockets? The answer, of course, is that there is no answer. It's all a matter of opinion, and government's job is to decide—so we're back where we started.

Transfer seeking is as old as government itself. A century ago in America, veterans and manufacturing industries wielded considerable lobbying clout. Being both inevitable and hallowed, lobbying might not be much of a worry if it stayed constant over time. But the rude surprise is that it doesn't. Lobbying, a physicist might say, is dynamically unstable.

3) The transfer-seeking economy, like any lucrative enterprise or sector, is a magnet for capital. In a developed economy, a marginal dollar invested in a new die-cutter or inventory-control system might produce a return of, say, 10 percent a year. Compare that with a shrewd investment in lobbying. In 1992, *The New York Times* reported that a handful of sugar refiners donated $8,500 to Sen. Alfonse D'Amato (R-N.Y.) and received his successful support for a tariff rebate worth $365 million—a return of about 4 million percent. Only a fool would pass up such an investment, or even the occasional shot at one. "If I throw in a million here or a million there, I might get a hundred million back," a Washington lobbyist once told me. "And there are probably enough cases like that so they keep throwing money in."

Not only does lobbying offer a rich assortment of investment opportunities, today it also enjoys unprecedented access to investment capital. In the old days of the smoke-filled rooms, access to lobbying was restricted mainly to the privileged ("special interests"). Democratization of the system justifiably opened the doors, but with a side effect: Today, in the age of mass-membership organizations and computerized mailing lists, the pool of people who can invest in lobbying comprises the entire adult population. To invest in lobbying is as easy today as to invest in a mutual fund: Find an interest group you like, if one doesn't find you first, and write a check.

Of course, any growing industry attracts capital—until further growth becomes superfluous, at which point profits vanish and investment dries up. But the lobbying sector, unlike conventional industries, doesn't seem self-equilibrating. To the contrary:

4) Transfer-seeking investment tends to be self-fueling, sucking in capital which tends to suck in yet more capital. This is a kind of whirlpool effect, and it is the reason I refer to the transfer-seeking industry as a "parasite economy." Parasites in nature force you to spend energy and resources fending them off. Transfer seekers are analogous, because they require their targets to fend them off. It takes a lobbyist to stop a lobbyist, and in a society where everyone can lobby, everyone needs Washington representation to defend against raids by everyone else's Washington representatives. When environmentalists lobby more, business lobbies more, and vice versa.

The cycle never seems to stop of its own accord. Because the best defense is a good offense, interest groups constantly angle for new goodies. Retirees' groups seek long-term care and prescription-drug subsidies, dairy farmers seek higher price supports, utility companies seek laws mandating electric cars, and so on. When the sugar people win a benefit, the corn-sweetener people need to try to even up the score. Each group's angling induces its competitors to redouble their efforts, and, as more lobbies dicker and more is invested in lobbying, it becomes all the more important not to be the

poor sucker who gets taken to the cleaners. The more people play this game, the more people need to play. Demand creates more demand, business generates more business.

5) Further fueling the cycle, professionals in the transfer-seeking sector can churn up business, and do. Transfer-seeking professionals—politicians and lobbyists and interest groups—are good at stirring the pot, and so at creating jobs for each other. Whether they do so out of idealism or financial interest—usually the former, I believe—the end result is perpetual motion. Other things being equal, the more contention, the better. The parasite economy as a whole benefits when problems are solved with a maximum of fuss but a minimum of success—a pretty good description of Washington at present. Significant bills revising the tax code were enacted in 1981, 1982, 1983, 1984, 1986, 1988, 1989, 1990, and 1993 (another was vetoed in 1992), yet no one seemed particularly happy with the tax code. Well motivated or not, constant tax-law churning is good business for one group above all: professionals in the transfer-seeking business.

This is not to say that most or even much of what Washington does is drummed up by lobbyists and politicians purely to generate fees. Not even Washington is quite that cynical a place. The point, rather, is that the lobbying dynamic is self-perpetuating: Activity generates lobbying generates activity. As the activity level rises, with it rises the public's ire, because:

6) Transfer-seeking professionals win no matter who else loses. This is what so infuriates the public (and Jerry Brown). Yes, it's better to win than lose, and better to have a good track record than a bad one. But *any* fight over resources benefits transfer-seeking professionals as a class, because they reap the fees. In that respect, lobbyists, politicians, and interest-group professionals are like lawyers: Though some clients lose, the fee takers, as a class, all win. They're like plumbers in a city that's springing more and more leaks.

Year after year, in budget after budget, the Reagan and Bush administrations proposed abolishing the Economic Development Administration, which dishes out grants and subsidies to localities. Reagan and Bush always failed, but they did succeed in reducing the EDA's budget, notably by eliminating general revenue sharing. "We figure our programs were cut about 70 percent," says Aliceann Wohlbruck of the National Association of Development Organizations, a group of EDA beneficiaries. Yet in 1979, before Reagan, the group had only one full-time staff person; it now has four, plus part-timers. The program's budget got smaller, but its lobby got bigger—a neat trick. This pattern is not inevitable, but it is common. Over time, lobbies tend to grow. Having grown, they are very hard to get rid of: in fact, attacking them can perversely help them to mobilize and consolidate their bases. One implication is:

7) As a class, transfer-seeking professionals don't much care who is in power. President Clinton came to office promising an assault on high-priced lobbyists: "They are the defenders of decline." And were the defenders of decline alarmed? Crowed one exultant lawyer-lobbyist in the *Legal Times* after the election. "We are all expecting about a 33 percent increase in fees." At firms with good Democratic connections, "the jubilation was palpable,"

reported the newspaper. But Republicans were hardly less elated, citing, as one prominent lobbyist told *National Journal*, "an almost automatic defensiveness from the corporate community on most issues it faces." Oh happy day!

Bill Clinton generally takes an expansionist view of government. Ronald Reagan generally took a reductionist view. Interestingly, however, the numbers of lobbyists and interest groups and campaign contributions rose impressively under Reagan. And that, really, is no surprise. If government expands, you need a lobbyist or an interest group to get a piece. But if government contracts, you need a lobbyist or an interest group to defend your piece. Remember, it is the level of contention and activity, not the size of government per se, that primarily influences the lobbying sector's growth. Reducing the size of government may be worthwhile on the merits, but it is unlikely to reduce the population of parasites, except perhaps temporarily.

So the beat goes on, come Republicans or Democrats, liberals or conservatives. In 1993, the American Automobile Manufacturers Association moved to Washington; so did the National Association of Independent Schools, saying it "wanted to be closer to the source"; so did the Business Roundtable. Washington offices opened left and right: the Society of Manufacturing Engineers, the Christian Coalition, MasterCard and Visa, even Major League Baseball. The latest trend, reports Eliza Newlin Carney in *National Journal*, is for universities (including public ones) to open their own offices in Washington: Rutgers, Princeton, Harvard, Vanderbilt, the University of California, MIT, and more to come.

Where does it all end? Maybe it doesn't.

8) There is no apparent limit to growth of the parasite economy. There are constraints on the speed of its growth, such as the scarcity of politicians' time and attention; and some particular lobbies will stagnate or contract or disappear altogether, as presumably buggy-whip lobbies have done. Other sectors, however, will expand quickly or even explosively. The health industry's congressional giving was up 25 percent in 1993 over its comparable 1991 level, and the number of health groups in Washington has more than sextupled (!) since 1979. On balance, given the deep pool of potential goodies to lobby for (or against), plus the tendency of lobbies to accumulate, plus the tendency of lobbying to create more demand for lobbying, it is hard to see why the lobbying sector as a whole would stop growing and start shrinking.

Few trends, of course, go on forever. To say that at present one can see no limit isn't to say that no limit exists. One may hope that at some point the lobbying buildup will go into reverse of its own accord. One might suppose, for instance, that after a while there would be so many lobbies that many of them, like bees swarming a puddle of honey, would be unable to penetrate to the food and would simply go away. Yet even this might only slow, rather than stop, the accumulation. Remember: A lobbyist doesn't need to actually pass a bill or win a new subsidy to earn his keep. In fact, in any given year the typical lobbyist never comes close to a big score. However, he doesn't need to score, *as long as someone else does.* Then he need only persuade

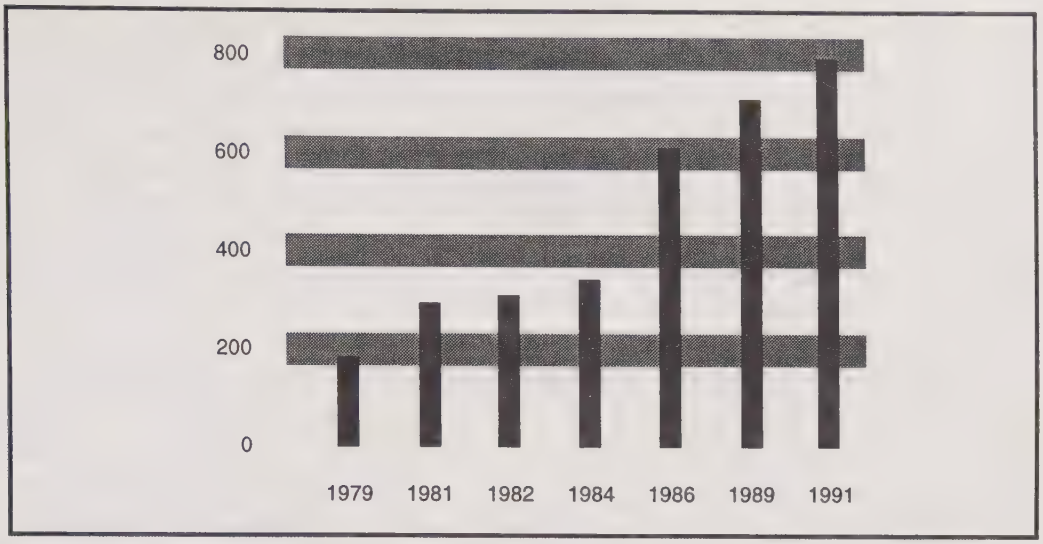

Figure 2
Number of Health Groups in Washington.
Source: National Health Council, *Health Groups in Washington*

some folks that they should look after their interests in Washington. And that is an easy case to make.

Suppose, then, that the worst turns out to be true, that, at least for the foreseeable future, lobbying activity grows and grows no matter who is in power, albeit with lulls and spurts. New lobbies keep appearing and old ones only rarely go away. What would that mean?

The first reflex is to predict economic disaster, both because the product of lobbying is a heavy burden of subsidies and special-interest benefits, and because lobbying itself sucks in more and more resources. But disaster need not happen. In fact, it probably won't happen. I'm not saying that the growth of a self-feeding parasite sector is economically innocuous: it isn't. Only that it needn't be the end of the world—if American society stays as open as possible to new competitors and innovations.

In a closed economy, like India's or the old Soviet Union's or Mexico's until recently, entrenched lobbies and reactionary interests can drive the country to penury. Lobbies are like fungus. They thrive in stagnant, sheltered places. For decades, Japan sealed its rice market, giving shelter to a ruthless farmers' lobby that drove food prices up, held farm productivity down, and bought and bullied politicians on a massive scale. By contrast, America's farm lobby, though strong, is weaker than Japan's, yet America's farmers are more productive than Japan's—all thanks to the comparative openness of the American agricultural market.

Openness—to new technology and to new competition, foreign and domestic—turns out to be a good inoculation against the worst economic depredations of lobbying, because it batters entrenched interests. By defini-

tion, what lobbies want is a permanent hold on their benefits. That is, they seek monopoly control of some piece of the private market (through trade protection, for instance, or favorable regulations) or some piece of the public treasury through subsidies or tax breaks). Once they've got their goodies, they go to great lengths to defend them—which is why heavily protected and subsidized industries, such as shipping, textiles, and agriculture, usually spend much more on lobbying than do less-protected ones, such as semiconductors and software. The converse is also true. Squeeze a lobby's monopoly, and you crimp its lifeline.

So the way to weaken the public-school employees' lobby—one of the most deeply entrenched and reactionary groups in American politics today—is by freeing tax money for public school's competitors. The way to weaken the farm lobby is to reduce agricultural subsidies. The way to weaken entrenched textile lobbies is to tear down their protective trade walls. The way to weaken cable-television lobbies and phone-company lobbies is to get rid of rules preventing the two industries from competing with each other, as the Clinton administration proposes to do. In short, the way to weaken coddled interests is to expose them to competition.

The rub is that exposure to competition is exactly what lobbies organize to avoid. Public-school teachers, farmers, textile companies, and the rest fight tooth and nail to keep every perk and goody they have ever acquired. They win more often than not, and even when they lose they rarely stay down for long. After 33 years, Congress finally managed last year to kill the honey subsidy, but the beekeepers' lobby bounced right back with a campaign for new trade restrictions on imported honey.

So we shouldn't kid ourselves. Crimping the transfer-seeking sector isn't easy. In fact, it is very difficult. It will require much more of the kind of innovative and forceful political leadership that produced the deregulation of transportation industries in the late 1970s, the subsidy-smashing tax-reform bill in 1986, and the North American Free Trade Agreement in 1993. Harder still, it will require the voters to support politicians who attack subsidies and protections that the voters themselves, speaking through their myriad groups, so fiercely protect.

To date, brave leadership and enlightened followership have both been scarce and sporadic. But we can hope that, as the parasite economy feeds and grows, the public will see more clearly why strong medicine is worth taking: The alternative is worse.

Jonathan Rauch, a contributing editor of National Journal *in Washington, is the author of* Demosclerosis: The Silent Killer of American Government, *just published by Times Books.*

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Leech Control

Jonathan Rauch's article on Washington lobbyists ("Suckers!," May) begins brilliantly and incisively but then comes to a lame halt, with Mr. Rauch concluding that it ain't so terrible after all since America is such an "open" society. Please!

The only way to limit the power of money on Capital Hill is to reduce the value of money. Lawmakers need the money of lobbyists in their campaign coffers to run for re-election. With public campaign financing and severe spending controls, deeper pockets would mean nothing. Candidates would be forbidden to spend any of their own money and would receive only a limited amount of public funds—just enough, say, to mail out position papers to their constituents.

Some say that banning lobbyists would infringe on First Amendment rights. But the Bill of Rights was designed to protect people from the government, not to protect the government from reasonable restrictions placed upon it by the people. For the same reason that no one may lobby or give money to a Supreme Court justice in the hope of a favorable ruling, no one should be allowed to lobby or give money to a lawmaker in an attempt to influence his vote. Bribery should be returned to where it belongs: under the table.

Steven E. Curtis
Spring, TX

As a "parasite" with some 30 years' experience before I retired five years ago, including 20 years as a lobbyist in Washington with one of the country's largest grass-roots organizations, I do not buy the generic description of all lobbyists as parasites. A great many lobbyists not only represent the interests of those who pay their salaries but, as many members of Congress will attest, provide an invaluable source of information on thousands of facets of the American economy.

Rauch fails to mention that the most powerful group of lobbyists in Washington consists of those who speak for the hundreds of agencies of the federal government, not to mention state and local government. At least half the time, expense, and effort of lobbyists is spent attempting to stop or make

less intrusive new laws that result in more regulation and suppression of initiative and investment. Lobbyists spend as much time fighting the growth of the federal leviathan as they do seeking favors from it.

If there is a lobbyist problem, the answer is to drastically cut the size and power of government at all levels. With fewer bureaucrats to influence and with less tax money to transfer, the so-called problem with lobbyists will solve itself.

C. H. Fields
Alexandria, VA

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Clean Air Act Violations and the Wood Products Industry[1]

Professor James Salzman

Objective

Three of the nation's largest wood product companies face the threat of EPA enforcement proceedings. At stake are millions of dollars of fines, tens of millions of dollars for pollution control equipment, and a public relations humiliation. The Board of one of the companies has asked for a joint briefing regarding the problem from the offices of Public Affairs, Corporate Finance and Accounting, and Corporate Counsel. The briefing must review and analyze the range of options available in response to EPA's threatened enforcement actions: What are their potential advantages and disadvantages, and their likelihood of success?

VOCs and the Clean Air Act

In the early 1980s, in implementing the Clean Air Act the EPA began investigating the environmental impacts from the wood products industry. In particular, the staff scientists focused on the production of plywood and waferboard. The production processes for both these wood products involve peeling and slicing timber into smaller wood chips which are then dried at high temperatures, glued, and pressed together. The drying of the sap and liquids stored in the wood necessarily releases large emissions of volatile organic compounds (VOCs) .

A huge class of organic compounds, VOCs include most everything we can smell (e.g. hydrocarbons such as gas and kerosene). In still, warm air, and in the presence of sunlight, VOCs can combine with nitrogen oxides from vehicle emissions and power plants to form lower-level atmospheric ozone (smog). In addition to creating the well-known brown haze of air pollution, smog poses serious health concerns to infants and adults with respiratory ailments.

The Clean Air Act was passed by Congress in 1970 and regulates emissions from vehicles and stationary sources throughout the country. The part of the Act relevant to this case is Title I: the system of Nationally uniform Ambient Air Quality Standards (NAAQS). Under Title I, the EPA has established NAAQS for seven common pollutants. The NAAQS are based on public health data and define the maximum legal concentration of these compounds in the air we breathe (e.g., 1.5 micrograms of lead per cubic meter of air). In essence, the NAAQS establish a quantified legal definition of "clean air." In order to share responsibility between federal and state actors, once the NAAQS are set by EPA, each state is free to meet these standards as it sees fit. The state writes a State Implementation Plan detailing what steps will be taken to ensure the NAAQS will be achieved. Upon EPA approval, the state is then left to implement its plan.

In some parts of the country, because of local geography, concentrated industry, and other factors, the NAAQS are not met (e.g. in Los Angeles they have never been met). These cities and regions with unlawfully high concentrations of air pollutants are called "non-attainment areas" and must meet special requirements restricting new growth and construction.

Similarly, certain areas' air quality is well under the NAAQS limits, such as in low-population rural areas or national parks. To prevent the flight of dirty industries to these clean air regions, the Clean Air Act regulates for the Prevention of Significant Deterioration (PSD) in these areas. In PSD areas, if a major industrial source builds a new plant which emits more than 250 tons annually of VOCs or makes a major modification that will emit more than 40 tons, a permit to operate must be obtained from state and federal authorities. These permits require the new plants or major modifications to employ "Best Available Control Technology" (BACT), informally referred to in the industry as "Most Expensive Control Technology."

The EPA has a wide arsenal of penalties for non-compliance (operating in a PSD region without a permit). Fines can be levied up $25,000 per day of non-compliance. While rarely exercised, EPA also retains the authority to shut down a plant's operation (temporary injunction) until it can ensure compliance. Finally, if a company knowingly withholds information from the government that shows it is in non-compliance, the EPA can seek criminal prosecution.

VOCs and AP-42

In the early 1980s the EPA had considered setting emissions limits on all new plywood and waferboard plants but refrained out of concern over technical difficulties in measuring emissions and the industry's weakened finances during a cyclical downturn in business. Because wood mills are often located in PSD areas, close to the sources of timber, they must measure their emissions at the time of construction or major modification to see whether permits are required. To provide guidance to mills in calculating their VOC emissions, EPA issued a technical document in the early 1980s known as AP-42. AP-42's formulae and tables represented the official, approved testing method for wood

industry VOC emissions. In practice, AP-42 functioned similarly to an IRS tax form. Each mill would insert its own data concerning the production process, volume of production, etc. into AP-42's formulae, come out at the end with a number, and read from a table the calculated VOC emissions.

For reasons still unclear, one of the numbers provided in the AP-42 calculations was incorrect. As a result, mills using AP-42 could underestimate their actual VOC emissions by 90%, mistakenly placing the emissions well below the levels required for a permit under the PSD requirements.

In 1983, the wood industry's research laboratory produced a report, Technical Bulletin 405, pointing out that plywood production emitted far more VOCs than the figures predicted in AP-42. The bulletin was sent to the research departments of the major wood companies and EPA's scientific research department. Neither the industry nor the EPA reacted to the findings of the Technical Bulletin and AP-42 was re-published, with the same mistake, in 1984, 1987 and 1991. The mistaken number was noticed and rectified by EPA in 1992.

There is some debate over the relevance of Technical Bulletin 405. Charles Simon, head of the wood industry research lab at the time of the Technical Bulletin's publication, says it is inconceivable that the companies' top scientists were unaware of the Bulletin's findings. By relying on the underestimates in AP-42, Simon states, "the industry was taking advantage of a regulatory agency's lack of knowledge. That's crystal clear to me." Those in the industry, however, maintain that the study was filled with so many qualifications and caveats that the EPA, itself, ignored the report's findings.

The Violations

The fortunes of the wood products market closely track the home building industry. After a period of recession and mill closings in the early 1980s, the home building market exploded in the mid-1980s, leading to greatly increased demand for plywood and other wood products. In response, new mills were rapidly built and old ones expanded.

In the early 1990s, after investigating other industrial sectors for compliance with the Clean Air Act, the EPA turned its focus on the compliance record of the wood products industry. As Technical Bulletin 405 had predicted a decade earlier, the EPA's investigation found that wood mills' VOC emissions were often in excess of the PSD requirements for a permit. Few mills had applied for permits to operate, however, and even fewer had installed BACT to limit VOC emissions. Apparently, these mills were blatantly in violation of the Clean Air Act.

The Companies

Louisiana Pacific (LP)

Based in Oregon, LP has been fined with some regularity for local pollution violations. Over the last few years, LP has been very successful in the waferboard market where it has gained a 50% market share. Most of LP's new plants

were built without VOC controls, LP contends, because VOC estimates based on AP-42 put the emissions well below 250 tons annually. EPA has charged Clean Air Act violations at 14 LP plants and started court proceedings.

EPA has offered LP a consent decree in which LP will not need to admit any wrongdoing. In exchange, LP must accept an $11 million civil penalty and agree to install $70 million of pollution control equipment that will incinerate the VOCs before they can escape. The $11 million fine would be the largest in the history of the Clean Air Act. LP corporate communication staff were unsuccessful in obtaining EPA's agreement not to publicize the size of the fine.

Weyerhaeuser

Based in Tacoma, Washington, Weyerhaeuser is also a major waferboard producer. In 1991, an internal audit at the company's Elkin, North Carolina, plant showed VOC emissions of 1,000 tons a year, ten times what the company had reported to state officials. The tests were confirmed and a review across the company's operations revealed at least 12 other mills with similar emission levels. The EPA inspectors have not yet monitored Weyerhauser's plants.

Weyerhaeuser regards itself as a company with a progressive environmental record and promotes this image in its PR materials. If the company were to reveal its violations to state authorities, it would be required to pay fines (about $1.5 million) and install new pollution control equipment at a cost of $20–30 million. This approach might also stave off federal involvement. Bill Ruckelshaus, former Administrator of the EPA and a member of Weyerhaeuser's board, has approached EPA informally over such a strategy and EPA has been encouraging. EPA has refused, however, to put anything in writing or to commit itself to refrain from filing a suit for penalties. EPA has a general policy to proceed with enforcement actions in order to recoup the economic benefits a company enjoyed by operating without pollution controls.

Georgia Pacific (GP)

Based in Atlanta, GP has had a mixed record of environmental compliance. To improve the company's environmental performance and reputation, in 1992 GP hired Lee Thomas, former Administrator of the EPA, as Vice President for environmental affairs. Within 9 months, Thomas had publicly set over 20 environmental targets for the company.

The EPA has given notice that it will start enforcement proceedings against 26 GP plants for PSD violations. The senior management of GP has serious reservations, however, in negotiating a consent decree with EPA. In the 1980s, calculations based on AP-42 showed that the GP plants did not require a PSD permit and GP formally consulted with state and federal officials in deciding whether or not to apply for a permit. Off the record, state officials from Alabama, Virginia and Georgia have told GP they disapprove of EPA's hard line.

GP has a powerful lobbying presence in Washington through its law firm, Hunton & Williams. Hunton & Williams believes it may be able to attach a provision on a bill of Senator Dole currently in the Senate Judiciary Committee. The provision would prevent federal officials from suing or prosecuting a company whose actions were based upon advice from responsible state or federal officials. One of the firm's former partners is now Senator Dole's chief counsel on regulatory issues.

If the bill is amended and goes to the floor of the Senate, it is likely the Justice Department and EPA will try to rally opposition to its passage. In other contexts, the courts have held that the federal government is not bound by misinformed or mistaken officials (e.g. if an IRS official gives you the wrong information and you underpay your taxes, you are still required at a later date to pay the amount owed). While the CAA, like many other environmental laws, shares implementation and enforcement duties with the states, EPA always reserves the right to commence legal proceedings against local major polluters. Otherwise, the EPA argues, there would be no recourse to weak state enforcement resulting from mistake or local political pressures. States with ailing economies might bid for dirty industries by promising lax enforcement of environmental laws. The safety and health of local residents would be sacrificed for economic growth and, in practice, there would be no national environmental policy.

Given the current anti-federal mood in Washington, however, it is difficult to predict the Administration's influence. Even if all goes well for GP, it could take eight months or longer before the bill is finally passed into law.

Additional facts

- Beyond the mills cited in the EPA enforcement proceedings, all three companies have many other operations which pollute, bringing them into regular contact with state and federal environmental officials for air, water and solid waste permits.
- In the Superfund context, the EPA has gained a reputation for playing hardball and making painful examples of companies that hold out and refuse to settle early with consent degrees.
- The strong market for plywood and waferboard, started in the 1980s, is still growing.
- Assume all the plants out of compliance started operation between 1984–1986.

Annex 1: Proposed Amendment to Regulatory Reform Bill

Annex 2: Gilbert's Law Summary of Administrative Law

Annex 3: Financial information for LP, Weyerhaeuser and GP

Annex 1: Proposed Amendment to the Comprehensive Regulatory Reform Bill

§709 Agency interpretations in civil and criminal actions

(a)(1) No civil or criminal penalty shall be imposed in any action brought in a Federal court for the alleged violation of a rule, if the defendant, prior to the alleged violation

(A) reasonably determined, based upon a description, explanation, or interpretation of the rule contained in the rule's statement of basis and purpose, that the defendant was in compliance with, exempt from, or otherwise not subject to, requirements of the rule; or

(B) was informed by the agency that promulgated the rule, or by a State authority to which had been delegated the responsibility for ensuring compliance with the rule, that the defendant was in compliance with, exempt from, or otherwise not subject to, the requirements of the rule.

(a)(2) In determining for purposes of paragraph (1)(A), whether a defendant reasonably relied upon a description, explanation, or interpretation of the rule contained in the rule's statement of basis and purpose, the court shall not give deference to any subsequent agency description or interpretation of the rule relied on by the agency that had not been published in the Federal Register or otherwise directly and specifically communicated to the defendant by the agency, or by the State authority to which had been delegated the responsibility for ensuring compliance with the rule, prior to the alleged violation.

(b)(1) No agency action shall be taken, or any action or other proceeding maintained, seeking the retroactive application of a requirement against any person that is based upon

(A) an interpretation of a statute, rule, guidance, agency statement of policy; or

(B) a determination of fact,

if such interpretation or determination is different from a prior interpretation or determination by the agency or by a State or local government exercising authority delegated or approved by the agency, and if such person relied upon the prior interpretation or determination.

Annex 2: Gilbert's Law Summary of Administrative Law

Estoppel: An agency at times may formulate policy—by issuing regulations or by giving advice—that it later retracts. The rule or advice may have been in error, or the government may simply have changed its mind. Private persons who have relied upon the initial policy may find themselves harmed by the subsequent change and may seek to estop the government from proceeding on the basis of its new policy. The law on this subject is quite confused.

a. **Traditional rule:** Traditionally, the government has not been held estopped by the erroneous advice of its agents. In other words, an agency was free to change or implement policy—contrary to assurances given by its agents—even though private parties had relied to their detriment upon the agents' advice.

b. **Recent trend: "reasonable and detrimental reliance" standard:** In a number of cases, lower federal courts have disregarded prior authority and have held that the government can in fact be estopped if the plaintiff established reasonable and detrimental reliance on its erroneous advice.

(1) **Where government acts in proprietary role:** Taking the lead in this area, the Ninth Circuit has held that the government *can* be equitably estopped where it acts as a private concern would (rather than it its sovereign role, for the benefit of the public).

(2) **To avoid serious injustice:** The Ninth Circuit affirmed its position holding the estoppel doctrine to apply to the United States where the government's erroneous advice would otherwise work a serious injustice.

Annex 3: Companies' Financial Information

LOUISIANA-PACIFIC CORPORATION

Headquarters	Portland, OR
199X annual sales	$2.2 billion
199X net income	$177 million
Annual sales of waferboard and plywood (W&P)	5.5 billion square feet
W&P market share	18.3%
Income from W&P	$18 million

WEYERHAEUSER COMPANY

Headquarters	Tacoma, WA
199X annual sales	$9.2 billion
199X net income	$372 million
Annual sales of waferboard and plywood (W&P)	3.25 billion square feet
W&P market share	10.8%
Income from W&P	$14 million

GEORGIA-PACIFIC CORPORATION

Headquarters	Atlanta, GA
199X annual sales	$11.8 billion
199X net loss	($124 million)
Annual sales of waferboard and plywood (W&P)	7.5 billion square feet
W&P market share	25.0%
Income from W&P	$23 million

Notes

1. This case is based on a real situation, described in a series of articles by Stephen Engelberg in the New York Times (4/26/95, 5/21/95). Parts of the case are paraphrased from the articles. The chronology has been altered for teaching purposes. The case was written by Professor J. Salzman. It is revised here with his permission.

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Instructions for Book Discussion

(for groups with several different books)

1. Each student should enumerate the key points of the book and offer a critique of the book. This should be done in succession and without discussion. During this time, each student should take notes on others' comments. [20–30 minutes]

2. As a group, you should discuss the books and your critiques. In some cases, the subject matter of the books is complementary while in others it contrasts sharply. Try to discover these similarities and differences. Consider what the respective authors might have to say to each other. [20–30 minutes]

3. Try to close the discussion with a list of four to six key points relevant to business and society that should be learned from the books and from your discussion of them. [10 minutes]

4. Finally, complete one evaluation form for each student. [10 minutes]

Peer Evaluation for Book Reviews

(for groups with several different books)

(your name) (name of student being evaluated)

Please evaluate the participation of other group members honestly and fairly. Your explanatory comments are important. All evaluations are confidential. Evaluations may influence paper grades.

Based on the discussion, how well do you understand the central points of the book reviewed by this student?

(do not understand) 1-----2-----3-----4-----5 (understand very well)

How well-reasoned and well-explained is this student's critique of the book?

(not well done) 1-----2-----3-----4-----5 (very well done)

Following this discussion, would you have any inclination to read the book yourself?

no----------maybe----------yes

Explain:

Additional comments:

Peer Evaluation for Book Reviews

(for groups with several different books)

(your name) (name of student being evaluated)

Please evaluate the participation of other group members honestly and fairly. Your explanatory comments are important. All evaluations are confidential. Evaluations may influence paper grades.

Based on the discussion, how well do you understand the central points of the book reviewed by this student?

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Explain:

Additional comments:

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How well-reasoned and well-explained is this student's critique of the book?

(not well done) 1-----2-----3-----4-----5 (very well done)

Following this discussion, would you have any inclination to read the book yourself?

no----------maybe----------yes

Explain:

Additional comments:

Instructions for Book Discussion

(for groups with the same book)

1. Begin the discussion by listing the central points of the book. [10–20 minutes]

2. Each student should offer a critique of the book, in succession and without discussion. During this time, each student should take notes on others' comments. [20 minutes]

3. Next, you should discuss the various critiques, debating the merits of the book and its implications for business and society. [20–30 minutes]

4. Finally, complete one evaluation form for each student. [10 minutes]

Peer Evaluation for Book Reviews

(for groups with the same book)

(your name) (name of student being evaluated)

Please evaluate the participation of other group members honestly and fairly. Your explanatory comments are important. All evaluations are confidential. Evaluations may influence paper grades.

1. Did you agree with this student's assessment of the book?

   no-----yes

2. How well-reasoned and well-explained is this student's critique of the book?

   (not well done) 1-----2-----3-----4-----5 (very well done)

3. Did this student's views affect your own views of the book? Please explain.

   no-----yes

Additional comments:

Peer Evaluation for Book Reviews

(for groups with the same book)

(your name) (name of student being evaluated)

Please evaluate the participation of other group members honestly and fairly. Your explanatory comments are important. All evaluations are confidential. Evaluations may influence paper grades.

1. Did you agree with this student's assessment of the book?

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2. How well-reasoned and well-explained is this student's critique of the book?

   (not well done) 1-----2-----3-----4-----5 (very well done)

3. Did this student's views affect your own views of the book? Please explain.

   no-----yes

Additional comments:

Peer Evaluation for Book Reviews

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Additional comments:

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2. How well-reasoned and well-explained is this student's critique of the book?

   (not well done) 1-----2-----3-----4-----5 (very well done)

3. Did this student's views affect your own views of the book? Please explain.

   no-----yes

Additional comments:

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Loyalty: Subversive Doctrine?

James H. Carbone

Loyalty, like nostalgia, is not what it used to be. Loyalists deplore the other guy's eroded loyalty. Opponents, those who believe loyalty atavistic, romantic silliness, urge jettisoning loyalty and getting on with our lives.

Loyalty Was

Loyalty was faithful adherence to sovereign. Our last sovereign, George III, persuaded us to be disloyal. Loyalty was faithful adherence to government, but we arranged our affairs, thanks to George, so government obeys us (or does it)? We may argue as citizens of democracy that we are loyal to ourselves. If so, why the acrimonious accusations of disloyalty?

Loyalty was faithfulness to agreements made, but observing agreements is an ethical or legal matter, making loyalty moot. Loyalty was adherence to a revered leader or cause or party, but loyalty's modern geometry has changed. We too frequently revere causes and parties having leaders residing in jail or soon arriving there.

Loyalty was behaving generously toward another, doing more than you agreed to do, doing what was not necessarily in your interest. Loyalty motivated recompense to another for the other's previous goodwill—a premium exceeding contractual mutual consideration.

Loyalty Has Become

Today, there is often no goodwill premium. An ersatz loyalty survives while congruent with self interest. During its short shelf life, it succumbs as it diverges from self interest. Management fad authors, invoking metaphysical snake oil, attribute enterprise success to loyalty. They conjure loyalty as ensuing from extrinsic reward (itself, fad policy) which assertedly produces organization stability, their surrogate for enterprise success. Reward paid for loyalty is bribery; reward extracted by threatened disloyalty is extortion.

Self-interest, Self-reliance

Opponents argue we're safer understanding loyalty's modern geometry: self interest. We're imperiled by failing to recognize loyalty's liability: no goodwill premium. Loyalty may be an intrinsically virtuous trait, but its business ramifications are pernicious. We're at risk embracing loyalty's fiction, relying irrationally on others' loyalty, placing our faith in loyalty after its shelf life has expired. A chorus of disappointment, recrimination, and complaint testifies to loyalty romantics, employers, and employees relying to their detriment. They should know better.

But they don't. Employers loyally postpone inevitable discharges, the delay requiring more drastic measures; the more drastic, the more harmful to the firm. Meanwhile, employees chant loyalty's mantra: it won't happen to me. Why do employees irrationally tend to embrace loyalty as shield against adversity? Because, during their lives, employees have been conditioned to rely on others, any others: family, union, government, employer . . . on anyone but self.

I Deserve

Worse, Loyalists use loyalty to deceive themselves, volunteering for a right to complain, to enjoy being loyalty's victim, self-righteously denouncing the other guy's betrayal and treachery. I deserve your attention, sympathy, respect, help; you owe me! The Loyalist is an accomplice in his misunderstanding and bears at least partial responsibility for his predicament.

Consider the disgruntled employee's accusation: I gave my job the best years of my life and you do this (e.g., discharge) to me! Rarely does a disgruntled employee explain why he gave the best years of his life to his job. Was he defrauded by years of pay checks and employee benefits? If so, by whom? Perhaps himself?

Consider the disgruntled employer. I faithfully paid you salary and benefits without fail during those "best years" you mention, and now, when I can no longer afford to pay you because of forces beyond my control, you accuse me of being unfair.

But, Loyalists argue, employer intentionally caused employees to believe employment would be permanent—or, if not intentionally, employer allowed employees to believe employer would reward loyalty with permanency—employer knew or should have known employees would interpret employer's behavior as assuring permanency.

Employer replies—nothing is forever. We employ alert people who understand employment tracks need. No one we hire would expect employment to violate free enterprise's creative-destruction, including waxing and waning employment.

There are temporary winners and losers during all economic transitions. Temporary losers include employers who lose the contract. Temporary losers also include those discharged and forced to give up comfortable dependence. Our evidence shows that discharged employees' next employment invariably

improved their status and their understanding of free market employee-employer relationships.

To the extent that employers embrace loyalty, postponing discharges, the inevitable discharges are more severe. To the extent that employees embrace loyalty, they are more susceptible to discharge hardship.

Loyalty Test

Discharged employees accuse employers of disloyalty—the same employees who would quit their employers instantly for the right employment offer from another employer or for the right self employment opportunity.

Let's test employee loyalty. If another employer offered you the same working conditions and your present compensation plus 10 percent, perhaps you'd decline; 15 percent?, 25 percent?, 50 percent?, 100 percent?, n percent? In my opinion, almost every person would, and should, change employer for some n percent, responding to a free market's efficient use of economic resources. Employees ignoring n percent opportunity confuse fear of change and risk aversion with loyalty. Note: the most loyal employee has no competing offer. Consider the high positive correlation between marginal employee performance and employee's professed loyalty. Carbone's employee rule: resume revision period $\leq$ 6 months.

Let's test employer loyalty. If you, an employer, have superior means to replace a current employee effectively at capital and operating cost equaling 90 percent of employee cost, perhaps you'd decline replacing an employee with the superior means; 80 percent?, 75 percent?, 50 percent?, 25 percent?, n percent?

In my opinion, for every employer there is, and should be, an n percent. Ignoring n percent, employer postpones superior means as employer's competitiveness decreases, productivity decrease, jeopardizing other workers' jobs. Have you ever heard an employer say he discharged an employee too soon? Note: the most loyal employer has trouble making payroll. Carbone's employer rule: performance review period $\leq$ 6 months.

Media Report

Time magazine reports: ". . . the dominant mood in a lot of American companies is one of fear and anxiety. Loyal corporate soldiers used to believe their employers would reward good work with job security, full benefits and decent pay. Now they have serious doubts about whether they can expect anything beyond the next paycheck." If *Time* reports reliably, realism may eventually prevail, motivated by these "serious doubts."

Time reports the predictable union statement: "Workers have a right to be upset and angry. They've been bought and sold and have seen their friends and relations fired and laid off in large numbers." And how do workers earn this "right to be upset and angry"? By deceiving themselves, Opponents contend. And with whom do workers have a "right to be upset and

angry"? Themselves, of course. Making an ass of yourself in public can be very upsetting.

Union Dogma

Time, again: "There is little bond in many companies between employers and workers anymore." Opponents argue the "bond" has always been a cultivated figment of union imagination. Unions, increasingly obsolescent, mired in 19th century dogma, need a dose of modern realism: employment is a bilateral, at will, contractual relationship.

Opponents assert employee "fear and anxiety" is self-inflicted, union encouraged, arising from romantic notions about loyalty. Employees should have no romantic expectation about being employed when their employment becomes unneeded. Employers should have no irrational expectation about retaining employees when employees have preferred opportunities elsewhere. Being loyal, whether you mean it or not, won't help.

Bilateral & Unequal

Loyalists say that employment may be bilateral, but the parties are not equal. This generalization has no merit. Headlines banner thousands of discharges by giant firms, implying employers in control. Headlines rarely mention the seller's market when these thousands were hired. Nor do the headlines observe that those discharged, usually including attrition and occurring during a prolonged period, comprise a fraction of total employment. Most employees work for small firms whose business would be devastated were even one key employee to depart.

A strong negotiating position does not need loyalty fiction. A weak negotiating position is not strengthened by loyalty fiction. In my opinion, both parties should abandon loyalty as an irrelevant complication.

Enduring Relationship

Opponents argue the bond between western culture employers and employees is economic and contractual—no more, no less. Workers may exercise their union-granted right to be "upset and angry," but workers' feelings are self imposed and union encouraged. In this culture, employment continues until employer has no need to employ or employee has no wish to be employed, whichever occurs first. Loyalty rarely ramifies as employees volunteering to resign to reduce payroll expense.

Furthermore, Opponents say there is a causal connection between inefficient over-employment and ensuing discharges. Opponents argue loyalty creates conditions reported by *Time* as disloyal.

Guilt

Guilt purveyors would have us believe that discharges, assertedly violating bonds of loyalty, have become endemic, causing egregious national employee

insecurity. Yet, large corporate layoffs comprise a minute proportion of employment friction and a smaller fraction of all employment. Nor has there been statistically significant shorter employment tenure during the last twenty years. Opponents say insecurity, whatever size, is rehabilitative—leading the discharged away from their loyalty habit toward self-reliance.

Compelled Loyalty

It is foolishness to try grafting loyalty onto an employment contract as a discharge preventing requirement. Compelled loyalty is an oxymoron. Even negotiated long term employment contracts would have a price—usually lower compensation during contract term to recompense employers for the inflexibility they have accepted.

There is no evidence that long term employment contracts would improve the lot of either employees or employers. If government forced its version of social responsibility on employers—compelling loyalty—there are daunting problems beyond the obvious oxymoron.

Herbert Stein writes:

> Some people would say that employers have a social responsibility to commit themselves to providing more assured employment. But would this social responsibility extend to paying workers as much as they would get without the commitment? And, if it did, would investors have a social responsibility to provide as much capital and on the same terms as they would without the employment commitment? And would consumers have a social responsibility to buy as much product if the commitment entailed higher prices? And who would have a social responsibility to the people who did not get employed in the first place because it would have entailed too large a commitment?[1]

We need to separate loyalty as a subversive doctrine, to avoid encouraging employees and employers to embrace loyalty as normative behavior. Loyalists and Opponents can blame each other for causing loyalty misunderstandings, but blaming and finding fault misses the point.

We need an employer-employee relationship not burdened by loyalty-caused recrimination. Nor is it helpful to future working relationships for either faction to assert the mindless claims for historic reparations from the other for the other's behavior. We need to get on with our lives, rather than prolong loyalty's co-dependency.

Virtual Workers

In my opinion, we should replace loyalty with enlightened self-interest—each party working with the other in a relationship guided by contract, not imaginary expectations.

Government has so burdened the workplace with social obligations, and with taxes to fund other social obligations, that it has induced employers to reduce their burden by reducing employment—outsourcing and hiring temporary employees. Temporary employees make no self-deluding assumptions

about loyalty: there is none, none implied, none expected; no union granted "right to be angry and upset," no victims, no someone-to-blame. Rather, the parties' relationship is set forth by a clean, defined, enforceable quid pro quo contract precluding loyalty misunderstandings by excluding from the relationship anything not included in the agreement.

Guilt purveyors assert that temporary workers suffer terrible stress by being excluded from job security and benefits. Temporaries ask, What job security; have you read the headlines? We provide our own security. We buy our own benefits, ones we really want. We can finally get paid what we are worth, when we want where we want, doing what we want. Employers can employ qualified people when wanted and only as long as needed, paying them a free market price for what they produce.

The virtual business is the alternative to smokestack-industry thinking and inferred loyalty oaths: on-line, skeletal, outsourcing needs, managing projects, Form W-2 employees replaced by Form 1099 independent contractors. This alternative is conducive to spawning generations of outsourcing suppliers and consumers whose watchword is not loyalty but self-interest, not dependency but self-reliance.

But . . .

Loyalists sometimes credit loyalty as motivating employee devotion to the business, manifested by acts sacrificing personal interests to group interests. Isn't this altruism to be encouraged?

In my opinion, sacrifice is pernicious—the seed of disgruntlement, the core of "you own me," the source of accusation and denial. We should extirpate loyalty and sacrifice as detrimental to personal and organizational health. Sacrifice is loyalty's underlying pathology. At its best, sacrifice encourages delusional expectation of reward not forthcoming. At its worst, sacrifice produces business tyrants indifferent to mass discharge.

When employees are amenable to self-sacrifice, it is a small step for employers to rationalize their sacrifice. Employees should not sacrifice themselves to group interest. They should contract formally or informally for their services. Employers should pay employees for what they deliver; employees should deliver what they are paid for. The parties administer excursions from contract terms and conditions as they have historically, using scope change and renegotiation. Neither party should rely to its detriment on loyalty's hallmark: vague, indeterminate, ephemeral inferences that the other guy will perform as expected.

Loyalists ask, if we abandon loyalty, don't we lose something important relating employers and employees? Doesn't loyalty motivate people to cooperate? Doesn't loyalty guide behavior toward beneficial ends more complex than contracts can contemplate?

Perhaps, Opponents reply, but loyalty is outrageously expensive, measured in delusion-caused cynicism, personal disappointment, disrupted business, ruptured human relationships, and the pathology of sacrifice and dependency.

Afterword

In my view there are three reasons we have not recognized loyalty as causing its pernicious business effect. Any change is difficult; apparently abandoning loyalty is an especially difficult change.

First, a human reason: abandoning loyalty is a change from a cherished ideal that we may suitably apply to other (non-business) parts of our lives—relationships with friends and loved-ones.

Second, a how-to reason: we are inept saying, Don't rely on me. We are unskilled at telling another to restrain his loyalty toward us and his assumptions about our loyalty to him.

Third, a reprehensible reason: confusing cause with effect; shifting blame for effect and exonerating cause. At the end of the day, it is irrelevant who allegedly caused whom to rely to his detriment. Detriment size is irrelevant. It is irrelevant who knew or should have known the effect of assumed loyalty. It is irrelevant that during a prolonged period one has been delusional. It is irrelevant that A thinks B owes A and B disagrees. It is irrelevant who is merely equal and who is more equal.

These are effects; loyalty, the cause. We shall not mitigate effects until we remove the cause. Loyalty is a vicious hoax we perpetrate on ourselves, revealed when the other guy inevitably trades loyalty for self-interest. Worse, loyalty becomes neurotic dependency; later, career addiction; the superannuate's last refuge. Reality, rather than naive expectation, is the better guide for business relationships. When you complain someone has been disloyal to you, you'll be right—and you are the someone.

Endnotes

1. "Good Times, Bad Vibes," *The Wall Street Journal*, March 14, 1996.

About the Author

James H. Carbone has a bachelor of engineering from Yale University, an MBA from Harvard University, and a PhD from the University of California at Los Angeles. He has managed firms in industries offering diverse products and services. His firm, NEXUS—Consultants to Management, helps owners, boards, and executives formulate and apply fundamental management concepts. Dr. Carbone teaches courses to MBA students at Golden Gate University, Sonoma State University, and the University of San Francisco.

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Voices from the Firing Line: Managers Discuss Punishment in the Workplace

Andrea Casey

Research Translation

At one time or another, virtually all managers find it necessary to discipline a subordinate. These punishment episodes, ranging from verbal reprimands to employee suspensions or firings, tend to be highly-charged, often emotional events. Yet, despite the emotional toll associated with punishment in the workplace, it remains a poorly understood phenomenon. How do managers feel after disciplining a subordinate? Are they angry at the person? Do they feel guilty, even if they know the punishment was justified?

These were some of the questions explored in a study about how managers think and feel about punishing their subordinates. Although most research has focused on the subordinate's response to punishment, researchers Kenneth Butterfield and Linda Klebe Trevino, of Pennsylvania State University, with Gail Ball of the University of Nevada at Las Vegas, wanted to better understand the supervising manager's experience of delivering punishment.

Butterfield and his colleagues interviewed seventy-seven managers, each from a different organizational setting, ranging from a small movie theater to the United States Army. In taped interviews, the managers were asked to discuss general issues related to punishment, and to describe two specific punishment episodes—one that was effective, and one that was not. The tapes were later transcribed and analyzed, line by line, for content themes. First, the researchers identified each separate, complete thought contained in the transcribed interviews. Second, each separate thought was categorized by content area. Finally, the content areas were grouped into unifying themes. The researchers were then able to study the thematic content of the interviews.

Several major themes emerged from the interviews. The most prevalent theme was instrumental; managers were clearly concerned with the outcomes

associated with the punishment. As might be expected, managers stressed how punishment changed the subordinate's performance. They described positive changes with statements such as "a great improvement in his attendance record" or "his sales have shot up considerably." However, negative outcomes were also noted, with statements such as "the tardiness still continued."

Interestingly, some unexpected instrumental themes arose, suggesting managers' concern with outcomes other than their subordinates' behaviors. Many comments described the managers' perception that they had gained respect from their subordinates and other employees as a result of a punishment episode. "I think they respected me and worked with me better afterwards," one said. Other comments referred to the effect of the punishment on other workers, and the vicarious learning experienced by the managers, other workers, and the organization as a whole. For instance, one manager commented. "People know they can't get away with anything like that in the future," while another stated, "I think it was a good learning experience for myself and all the managers."

Another central theme in the interviews reflected the managers' attempts to present a positive image of the punishment situations. They used a variety of strategies to communicate their competence in the interviews, explaining why the punishment was necessary. and that the disciplinary action was required by their managerial role: "I did not want to do what I had to do, but I did my job." Many managers stressed that the punishment was justified for reasons such as unsatisfactory performance or lack of commitment: "He was told that if it happened again, it would result in termination. . . . He really created his own destiny." Although the managers were willing to acknowledge that some situations were mishandled, they often put a positive spin on the mishandled situations by noting the lessons learned from the mistake.

Many managers expressed a strong concern for both the punished subordinates and their co-workers. Clearly, when making their punishment decisions, the managers considered the context of the punishment episode to extend beyond the immediate work environment. They expressed a reluctance to punish, and considered many factors in their punishment decisions, including the subordinates' work histories, their personal and family situations, and their general well-being. One manager noted. "You are concerned and you always keep in the back of your mind that this is his livelihood."

Finally, managers frequently described the emotional costs associated with punishment episodes. Not surprisingly, most of the emotions described in the interviews were negative, including frustration, anger, guilt, and failure. "It's a bad feeling . . . you watch this person, you try to give your energy, your input . . . it's kind of like a failure on your part."

As interesting as it is to explore how managers talked about punishment situations, it is equally interesting to point out what they did not talk about. For instance, it was striking that the managers did not mention their peers or their own managers when relating the punishment scenarios. The authors of the study speculate that perhaps disciplinary practices were not a critical part of the managers' own performance evaluations, since managers appeared to

make difficult punishment decisions without seeking or receiving guidance from their peers or superiors.

The findings of this study have implications for many facets of management, including management education. As Butterfield and his colleagues note, most management training takes a narrow view of punishment, emphasizing alternatives to punishment or, if punishment is unavoidable, providing a simplistic list of the relevant dos and don'ts. However, the results of this study suggest that managers take a much broader view of punishment, and consider punishment situations to be complex social phenomena with far-reaching implications for the organization and the work group.

Source: Kenneth D. Butterfield, Linda Klebe Trevino and Gail A. Ball, "Punishment from the manager's perspective: A grounded investigation and inductive model." *Academy of Management Journal*, 39, 1479–1512.

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The Lincoln Electric Company, 1989

Arthur D. Sharplin

People are our most valuable asset. They must feel secure, important, challenged, in control of their destiny, confident in their leadership, be responsive to common goals, believe they are being treated fairly, have easy access to authority and open lines of communication in all possible directions. Perhaps the most important task Lincoln employees face today is that of establishing an example for others in the Lincoln organization in other parts of the world. We need to maximize the benefits of cooperation and teamwork, fusing high technology with human talent, so that we here in the USA and all of our subsidiary and joint venture operations will be in a position to realize our full potential.

George Willis, CEO, The Lincoln Electric Company

The Lincoln Electric Company was the world's largest manufacturer of arc-welding products and a leading producer of industrial electric motors. The firm employed 2400 workers in two U.S. factories near Cleveland and an equal number in eleven factories located in other countries. This did not include the field sales force of more than 200. The company's U.S. market share (for arc-welding products) was estimated at more than 40 percent.

The Lincoln incentive management plan was well-known for many years. Many college management texts referred to the Lincoln plan as a model for achieving higher worker productivity. Certainly, the firm was successful according to the usual measures.

James F. Lincoln died in 1963 and there was some concern, even among employees, that the management system would fall into disarray, that profits would decline, and that year-end bonuses might be discontinued. Quite the contrary, 24 years after Lincoln's death, the company appeared to be as strong as ever. Each year, except the recession years 1982 and 1983, saw high profits and bonuses. Employee morale and productivity remained very good. Em-

ployee turnover was almost nonexistent except for retirements. Lincoln's market share was stable. The historically high stock dividends continued.

A Historical Sketch

In 1895, after being "frozen out" of the depression-ravaged Elliott-Lincoln Company, a maker of Lincoln-designed electric motors, John C. Lincoln took out his second patent and began to manufacture his improved motor. He opened his new business, unincorporated, with $200 he had earned redesigning a motor for young Herbert Henry Dow, who later founded the Dow Chemical Company.

Started during an economic depression and cursed by a major fire after only 1 year in business, the company grew, but hardly prospered, through its first quarter-century. In 1906, John C. Lincoln incorporated the business and move from his one-room, fourth-floor factory to a new three-story building he erected in east Cleveland. He expanded his work force to thirty and sales grew to over $50,000 a year. John preferred being an engineer and inventor rather than a manager, though, and it was to be left to another Lincoln to manage the company through its years of success.

In 1907, after a bout with typhoid fever forced him to leave Ohio State University in his senior year, James F. Lincoln, John's younger brother, joined the fledgling company. In 1914 he became active head of the firm, with the titles General Manager and Vice President. John remained President of the company for some years but became more involved in other business ventures and in his work as an inventor.

One of James Lincoln's early actions was to ask the employees to elect representatives to a committee (called the "Advisory Board") which would advise him on company operations. The Advisory Board met with the Chief Executive Officer every 2 weeks. This was only the first of a series of innovative personnel policies which, over the years, distinguished Lincoln Electric from its contemporaries.

The first year the Advisory Board was in existence, working hours were reduced from 55 per week, then standard, to 50 hours a week. In 1915, the company gave each employee a paid-up life insurance policy. A welding school, which continues today, was begun in 1917. In 1918, an employee bonus plan was attempted. It was not continued, but the idea was to resurface later.

The Lincoln Electric Employees' Association was formed in 1919 to provide health benefits and social activities. This organization continues today and has assumed several additional functions over the years. In 1923, a piecework pay system was in effect, employees got 2 weeks paid vacation each year, and wages were adjusted for changes in the Consumer Price Index. Approximately 30 percent of the common stock was set aside for key employees in 1914. A stock purchase plan for all employees was begun in 1925.

The Board of Directors voted to start a suggestion system in 1929. The program is still in effect, but cash awards, a part of the early program, were discontinued several years ago. Now, suggestions are rewarded by additional "points," which affect year-end bonuses.

The legendary Lincoln bonus plan was proposed by the Advisory Board and accepted on a trial basis in 1934. The first annual bonus amounted to about 25 percent of wages. There was a bonus every year after that. The bonus plan became a cornerstone of the Lincoln management system, and recent bonuses approximated annual wages.

By 1944, Lincoln employees enjoyed a pension plan, a policy of promotion from within, and continuous employment. Base pay rates were determined by formal job evaluation, and a merit rating system was in effect.

In the prologue of James P. Lincoln's last book, Charles G. Herbruck wrote regarding the foregoing personnel innovations:

> They were not to buy good behavior. They were not efforts to increase profits. They were not antidotes to labor difficulties. They did not constitute a "do-gooder" program. They were expressions of mutual respect for each person's importance to the job to be done. All of them reflect the leadership of James Lincoln, under whom they were nurtured and propagated.

During World War II, Lincoln prospered as never before. By the start of the war, the company was the world's largest manufacturer of arc-welding products. Sales of about $4 million in 1934 grew to $24 million by 1941. Productivity per employee more than doubled during the same period. The Navy's Price Review Board challenged the high profits. The Internal Revenue Service questioned the tax deductibility of employee bonuses, arguing they were not "ordinary and necessary" costs of doing business, but the forceful and articulate James Lincoln was able to overcome the objections.

Certainly after 1935 and probably for several years before that, Lincoln productivity was well above the average for similar companies. The company claimed levels of productivity more than twice those for other manufacturers from 1945 onward. Information available from outside sources tended to support these claims.

Company Philosophy

James F. Lincoln was the son of a Congregational minister, and Christian principles were at the center of his business philosophy. The confidence that he had in the efficacy of Christ's teachings was illustrated by the following remark taken from one of his books:

> The Christian ethic should control our acts. If it did control our acts, the savings in cost of distribution would be tremendous. Advertising would be a contact of the expert consultant with the customer, in order to give the customer the best product available when all of the customer's needs are considered. Competition then would be in improving the quality of products and increasing efficiency in producing and distributing them; not in deception, as it now too customary. Pricing would reflect efficiency of production; it would not be a selling dodge that the customer may well be sorry he accepted. It would be proper for all concerned and rewarding for the ability used in producing the product.

There was no indication that Lincoln attempted to evangelize his employees or customers—or the general public, for that matter. Neither the Chairman of the Board and Chief Executive, George Willis, nor the President, Donald F. Hastings, mentioned the Christian gospel in speeches and interviews. The company motto, "The actual is limited, the possible is immense," was prominently displayed, but there was no display of religious slogans and no company chapel.

Attitude toward the Customer

James Lincoln saw the customer's needs as the raison d'etre for every company. "When any company has achieved success so that it is attractive as an investment," he wrote, "all money usually needed for expansion is supplied by the customer in retained earnings. It is obvious that the customer's interests, not the stockholder's, should come first." In 1947 he said, "Care should be taken . . . not to rivet attention on profit. Between 'How much do I get?' and 'How do I make this better, cheaper, more useful?' the difference is fundamental and decisive." Willis, too, ranked the customer as management's most important constituency. This was reflected in Lincoln's policy to "at all times price on the basis of cost and at all times keep pressure on our cost." Lincoln's goal, often stated, was "to build a better and better product at a lower and lower price." "It is obvious," James Lincoln said, "that the customer's interests should be the first goal of industry."

Attitude toward Stockholders

Stockholders were given last priority at Lincoln. This was a continuation of James Lincoln's philosophy: "The last group to be considered is the stockholders who own stock because they think it will be more profitable than investing money in any other way." Concerning division of the largess produced by incentive management, he wrote. "The absentee stockholder also will get his share, even if undeserved, out of the greatly increased profit that the efficiency produces."

Attitude toward Unionism

There was never a serious effort to organize Lincoln employees. While James Lincoln criticized the labor movement for "selfishly attempting to better its position at the expense of the people it must serve," he still had kind words for union members. He excused abuses of union power as "the natural reactions of human beings to the abuses to which management has subjected them." Lincoln's idea of the correct relationship between workers and managers was shown by this comment: "Labor and management are properly not warring camps; they are parts of one organization in which they must and should cooperate fully and happily."

Beliefs and Assumptions about Employees

If fulfilling customer needs was the desired goal of business, then employee performance and productivity were the means by which this goal could best

be achieved. It was the Lincoln attitude toward employees, reflected in the following comments by James Lincoln, which was credited by many with creating the success the company experienced:

> The greatest fear of the worker, which it the same as the greatest fear of the industrialist in operating a company, is the lack of income. . . . The industrial manager is very conscious of his company's need of uninterrupted income. He is completely oblivious, evidently, of the fact that the worker has the same need.
>
> [The worker] is just as eager as any manager is to be part of a team that is properly organized and working for the advancement of our economy. . . . He has no desire to make profits for those who do not hold up their end in production, as is true of absentee stockholders and inactive people in the company.
>
> If money is to be used as an incentive, the program must provide that what is paid to the worker is what he has earned. The earnings of each must be in accordance with accomplishment.
>
> Status is of great importance in all human relationships. The greatest incentive that money has, usually, is that it is a symbol of success. . . . The resulting status is the real incentive. . . . Money alone can be an incentive to the miser only.
>
> There must be complete honesty and understanding between the hourly worker and management if high efficiency is to be obtained.

Lincoln's Business

Arc welding was the standard joining method in shipbuilding for decades. It was the predominant way of connecting steel in the construction industry. Most industrial plants had their own welding shops for maintenance and construction. Manufacturers of tractors and all kinds of heavy equipment used arc welding extensively in the manufacturing process. Many hobbyists had their own welding machines and used them for making metal items such as patio furniture and barbecue pits. The popularity of welded sculpture as an art form was growing.

While advances in welding technology were frequent, arc-welding products, in the main, hardly changed. Lincoln's Innershield process was a notable exception. This process, described later, lowered welding cost and improved quality and speed in many applications. The most widely used Lincoln electrode, Fleetweld 5P, was virtually the same from the 1930s to 1989. The most popular engine-driven welder in the world, the Lincoln SA-200 was a gray-colored assembly, including a four-cylinder continental "Red Seal" engine and a 200-ampere direct-current generator with two current-control knobs, for at least four decades. A 1989 model SA-200 even weighed almost the same as the 1950 model, and it certainly was little changed in appearance.

The company's share of the U.S. arc-welding products market appeared to have been about 40 percent for many years. The welding products market grew somewhat faster than the level of industry in general. The market was

highly price-competitive, with variations in prices of standard items normally amounting to only 1 or 2 percent. Lincoln's products were sold directly by its engineering-oriented sales force and indirectly though its distributor organization. Advertising expenditures amounted to less than 0.75 percent of sales. Research and development expenditures typically ranged from $10 million to $12 million, considerably more than competitors spent.

The other major welding process, flame welding, had not been competitive with arc welding since the 1930s. However, plasma arc welding, a relatively new process which used a conducting stream of superheated gas (plasma) to confine the welding current to a small area, made some inroads, especially in metal tubing manufacturing, in recent years. Major advances in technology which would produce an alternative superior to arc welding within the next decade or so appeared unlikely. Also, it seemed likely that changes in the machines and techniques used in arc welding would be evolutionary rather than revolutionary.

Products

The company was primarily engaged in the manufacture and sale of arc-welding products—electric welding machines and metal electrodes. Lincoln also produced electric motors ranging from 0.5 to 200 horsepower. Motors constituted about 8 to 10 percent of total sales. Several million dollars was recently invested in automated equipment that would double Lincoln's manufacturing capacity for 0.5- to 20-horsepower electric motors.

The electric welding machines, some consisting of a transformer or motor and generator arrangement powered by commercial electricity and others consisting of an internal combustion engine and generator, were designed to produce 30 to 1500 amperes of electrical power. This electrical current was used to melt a consumable metal electrode, with the molten metal being transferred in superhot spray to the metal joint being welded. Very high temperatures and hot sparks were produced, and operators usually had to wear special eye and face protection and leather gloves, often along with leather aprons and sleeves.

Lincoln and its competitors marketed a wide range of general-purpose and specialty electrodes for welding mild steel, aluminum, cast iron, and stainless and special steels. Most of these electrodes were designed to meet the standards of the American Welding Society, a trade association. They were thus essentially the same as to size and composition from one manufacturer to another. Every electrode manufacturer had a limited number of unique products, but these typically constituted only a small percentage of total sales.

Welding electrodes were of two basic types:

1. Coated "stick" electrodes, usually 14 inches long and smaller than a pencil in diameter, were held in a special insulated holder by the operator, who had to manipulate the electrode in order to maintain a proper arc width and pattern of deposition of the metal being transferred. Stick electrodes were packaged in 6- to 50-pound boxes.

2. Coiled wire, ranging in diameter from 0.035 to 0.219 inch, was designed to be fed continuously to the welding-arc through a "gun" held by the operator or positioned by automatic positioning equipment. The wire was packaged in coils, reels, and drums weighing from 14 to 1000 pounds and could be solid or flux-cored.

Manufacturing Processes

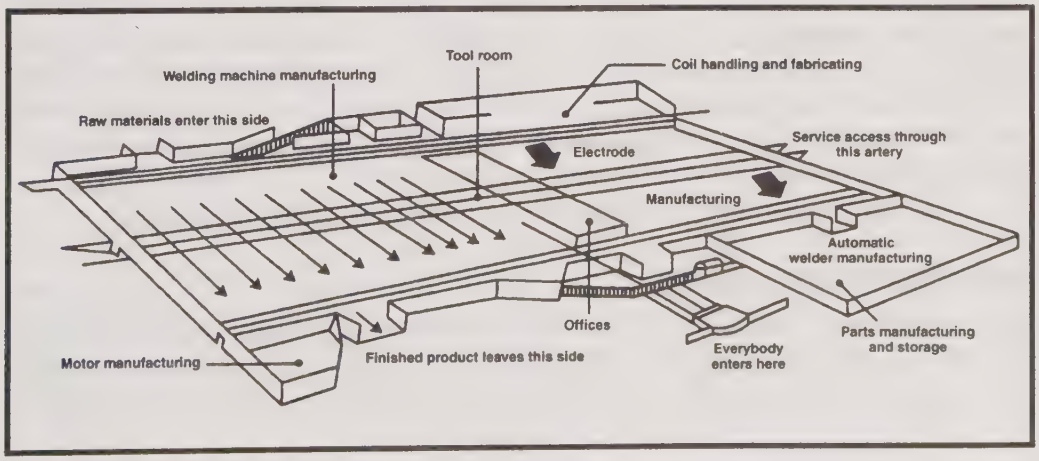
The main plant was in Euclid, Ohio, a suburb on Cleveland's east side. The layout of the plant is shown in Exhibit 1. There were no warehouses. Materials flowed from the 1/2-mile-long dock on the north side of the plant through the production lines to a very limited storage and loading area on the south side. Materials used on each work station were stored as close as possible to the work station. The administrative offices, near the center of the factory, were entirely functional. A corridor below the main level provided access to the factory floor from the main entrance near the center of the plan. *Fortune* magazine declared the Euclid facility one of America's ten best-managed factories,[1] and compared it with a General Electric plant also on the list:

> Stepping into GE's spanking new dishwasher plant, an awed supplier said, is like stepping "into the Hyatt Regency." By comparison, stepping into Lincoln Electric's 33-year-old, cavernous, dimly lit factory is like stumbling into a dingy big-city YMCA. It's only when one starts looking at how these factories do things that similarIties become apparent. They have found ways to merge design with manufacturing, build in quality, make wise choices about automation, get close to customers, and handle their work forces.

A new Lincoln plant, in Mentor, Ohio, housed some of the electrode production operations, which were moved from the main plant.

Electrode manufacturing was highly capital-intensive. Metal rods purchased from steel producers were drawn down to smaller diameters, cut to

Exhibit 1
Main Factory Layout



length, coated with pressed-powder "flux" for stick electrodes or plated with copper (for conductivity), and put into coils or spools for wire. Lincoln's Innershield wire was hollow and filled with a material similar to that used to coat stick electrodes. As mentioned earlier, this represented a major innovation in welding technology when it was introduced. The company was highly secretive about its electrode production processes, and outsiders were not given access to the details of those processes.

Lincoln welding machines and electric motors were made on a series of assembly lines. Gasoline and diesel engines were purchased partially assembled, but practically all other components were made from basic industrial products (e.g., steel bars and sheets and bar copper conductor wire).

Individual components, such as gasoline tanks for engine-driven welders and steel shafts for motors and generators, were made by numerous small "factories within a factory." The shaft for a certain generator, for example, was made from raw steel bar by one operator who used five large machines, all running continuously. A saw cut the bar to length, a digital lathe machined different sections to varying diameters, a special milling machine cut a slot for the keyway, and so forth, until a finished shaft was produced. The operator moved the shafts from machine to machine and made necessary adjustments.

Another operator punched, shaped, and painted sheetmetal cowling parts. One assembled steel laminations onto a rotor shaft, then wound, insulated, and tested the rotors. Finished components were moved by crane operators to the nearby assembly lines.

Worker Performance and Attitudes

Exceptional worker performance at Lincoln was a matter of record. The typical Lincoln employee earned about twice as much as other factory workers in the Cleveland area. Yet the company's labor cost per sales dollar in 1989, 26 cents, was well below the industry average. Worker turnover was practically nonexistent except for retirements and departures by new employees.

Sales per Lincoln factory employee exceeded $150,000. An observer at the factory quickly saw why this figure was so high. Each worker was proceeding busily and thoughtfully about the task at hand. There was no idle chatter. Most workers took no coffee breaks. Many operated several machines and made a substantial component unaided. The supervisors were busy with planning and record-keeping duties and hardly glanced at the people they "supervised." The manufacturing procedures appeared to be efficient—no unnecessary steps, no wasted motions, no wasted materials. Finished components moved smoothly to subsequent work stations.

The Appendix gives summaries of interviews with employees.

Organization Structure

Lincoln never allowed development of a formal organization chart. The objective of this policy was to ensure maximum flexibility. An open-door policy was practiced throughout the company, and personnel were encouraged to

take problems to the persons most capable of resolving them. Once, Harvard Business School researchers prepared an organization chart reflecting the implied relationships at Lincoln. The chart became available within the company, and management felt that the chart had a disruptive effect. Therefore, no organizational chart appears in this report.

Perhaps because of the quality and enthusiasm of the Lincoln work force, routine supervision was almost nonexistent. A typical production foreman, for example, supervised as many as 100 workers, a span of control which did not allow more than infrequent worker-supervisor interaction.

Position titles and traditional flows of authority did imply something of an organizational structure, however. For example, the Vice-President, Sales, and the Vice-President, Electrode Division, reported to the President, as did various staff assistants such as the Personnel Director and the Director of Purchasing. Using such implied relationships, it was determined that production workers had two or, at most, three levels of supervision between themselves and the President.

Personnel Policies

As mentioned earlier, Lincoln's remarkable personnel practices were credited by many with the company's success.

Recruitment and Selection

Every job opening was advertised internally on company bulletin boards, and any employee could apply for any job so advertized. External hiring was permitted only for entry-level positions. Selection for these jobs was done on the basis of personal interviews; there was no aptitude or psychological testing. Not even a high school diploma was required—except for engineering and sales positions, which were filled by graduate engineers. A committee consisting of vice presidents and supervisors interviewed candidates initially cleared by the Personnel Department. Final selection was made by the supervisor who had a job opening. Out of over 3500 applicants interviewed by the Personnel Department during one period, fewer than 300 were hired.

Job Security

In 1958 Lincoln formalized its guaranteed continuous employment policy, which had already been in effect for many years. There have been no layoffs since World War II. Since 1958, every worker with over 2 year's longevity has been guaranteed at least 30 hours per week, 49 weeks per year.

The policy was never so severely tested as during the 1981–1983 recession. As a manufacturer of capital goods, Lincoln had business that was highly cyclical. In previous recessions the company had been able to avoid major sales declines. However, sales plummeted 32 percent in 1982 and another 16 percent the next year. Few companies could withstand such a revenue collapse and remain profitable. Yet, not only did Lincoln earn profits, but no employee was laid off and year-end incentive bonuses continued. To weather

the storm, management cut most of the nonsalaried workers back to 30 hours a week for varying periods of time. Many employees were reassigned. and the total work force was slightly reduced through normal attrition and restricted hiring. Many employees grumbled at their unexpected misfortune, probably to the surprise and dismay of some Lincoln managers. However, sales and profits—and employee bonuses—soon rebounded, and all was well again.

Performance Evaluations

Each supervisor formally evaluated subordinates twice a year using the cards shown in Exhibit 2. The employee performance criteria—"quality," "dependability," "ideas and cooperation," and "output," are considered to be independent of each other. Marks on the cards were converted to numerical scores which were forced to average 100 for each evaluating supervisor. Individual merit rating scores normally ranged from 80 to 110. Any score over 110 required a special letter to top management. These scores (over 110) were not considered in computing the required 100-point average for each evaluating supervisor. Suggestions for improvements often resulted in recommendations for exceptionally high performance scores. Supervisors discussed individual performance marks with the employees concerned. Each warranty claim was traced to the individual employee whose work caused the defect. The employee's performance score might be reduced, or the worker might be required to repay the cost of servicing the warranty claim by working without pay.

Compensation

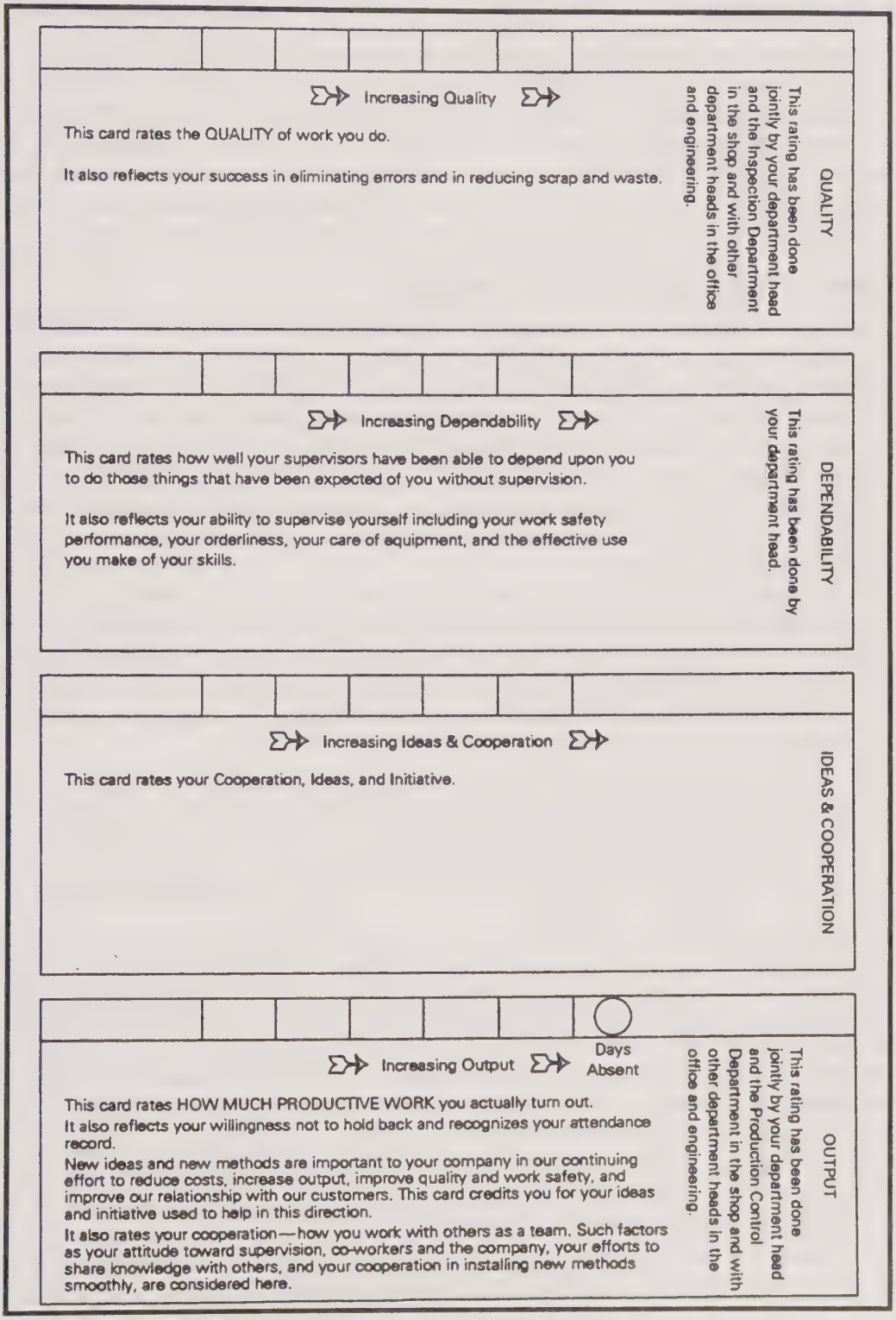
Basic wage levels for jobs at Lincoln were determined by a wage survey of similar jobs in the Cleveland area. These rates were adjusted quarterly in accordance with changes in the Cleveland area wage index. Insofar as possible, base wage rates were translated into piece rates. Practically all production workers and many others—for example, some forklift operators—were paid by piece rate. Once established, piece rates were never changed unless a substantive change in the way a job was done resulted from a source other than the worker doing the job.

In December of each year, a portion of annual profits was distributed to employees as bonuses. Incentive bonuses since 1934 have averaged about 90 percent of annual wages and somewhat more than after-tax profits. The average bonus for 1988 was $21,258. Even for the recession years 1982 and 1983, bonuses averaged $13,998 and $8,557, respectively. Individual bonuses were proportional to merit rating scores. For example, assume the amount set aside for bonuses was 80 percent of total wages paid to eligible employees. A person whose performance score was 95 would receive a bonus of 76 percent (0.80×0.95) of annual wages.

Vacations

The company was shut down for 2 weeks in August and 2 weeks during the Christmas season. Vacations were taken during these periods. For employees

Exhibit 2
Merit Rating Cards



with over 25 years of service, a fifth week of vacation could be taken at a time acceptable to superiors.

Work Assignment

Management had authority to transfer workers and to switch between overtime and short time as required. Supervisors had undisputed authority to assign specific parts to individual workers, who might have their own preferences due to variations in piece rates. During the 1982–1983 recession, fifty factory workers volunteered to join sales teams and fanned out across the country to sell a new welder designed for automobile body shops and small machine shops. The result—$10 million in sales and a hot new product.

Employee Participation in Decision Making

Thinking of participative management usually evokes a vision of a relaxed, nonauthoritarian atmosphere. This was not the case at Lincoln. Formal authority was quite strong. "We're very authoritarian around here," said Willis. James F. Lincoln placed a good deal of stress on protecting management's authority. "Management in all successful departments of industry must have complete power," he said. "Management is the coach who must be obeyed. The workers, however, are the players who alone can win the game." Despite this attitude, there were several ways in which employees participated in management at Lincoln.

Richard Sabo, Assistant to the Chief Executive Officer, related job enlargement/enrichment to participation. He said, "The most important participative technique that we use is giving more responsibility to employees. We give a high school graduate more responsibility than other companies give their foremen." Management put limits on the degree of participation which was allowed, however. In Sabo's words;

> When you use "participation," put quotes around it. Because we believe that each person should participate only in those decisions he is most knowledgeable about. I don't think production employees should control the decisions of the chairman. They don't know as much as he does about the decisions he is involved in.

The Advisory Board, elected by the workers, met with the Chairman and the President every 2 weeks to discuss ways of improving operations. As noted earlier, this board had been in existence since 1914 and had contributed to many innovations. The incentive bonuses, for example, were first recommended by this committee. Every employee had access to Advisory Board members, and answers to all Advisory Board suggestions were promised by the following meeting. Both Willis and Hastings were quick to point out, though, that the Advisory Board only recommended actions. "They do not have direct authority," Willis said, "and when they bring up something that management thinks is not to the benefit of the company, it will be rejected."

Under the early suggestion program, employees were awarded one-half of the first year's savings attributable to their suggestions. Later, however, the

value of suggestions was reflected in performance evaluation scores, which determined individual incentive bonus amounts.

Training and Education

Production workers were given a short period of on-the-job training and then placed on a piecework pay system. Lincoln did not pay for off-site education, unless very specific company needs were identified. The idea behind this policy, according to Sabo, was that not everyone could take advantage of such a program, and it was unfair to expend company funds for an advantage to which there was unequal access. Recruits for sales jobs, already college graduates, were given on-the-job training in the plant, followed by a period of work and training at one of the regional sales offices.

Fringe Benefits and Executive Perquisites

A medical plan and a company-paid retirement program were in effect for many years. A plant cafeteria, operated on a break-even basis, served meals at about 60 percent of the usual costs. The Employee Association, to which the company did not contribute, provided disability insurance and social and athletic activities. The employee stock ownership program resulted in employee ownership of about 50 percent of the common stock. Under this program, each employee with more than 2 years of service could purchase stock in the corporation. The price of the shares was established at book value. Stock purchased through this plan could be held by employees only. Dividends and voting rights were the same as for stock which was owned outside the plan. Approximately 75 percent of the employees owned Lincoln stock.

As to executive perquisites, there were none. Executives had crowded, austere offices; no executive washrooms or lunchrooms; and no reserved parking spaces. Even the top executives paid for their own meals and ate in the employee cafeteria. On one recent day, Willis arrived at work late due to a breakfast speaking engagement and had to park far away from the factory entrance.

Financial Policies

James F. Lincoln felt strongly that financing for company growth should come from within the company—through initial cash investment by the founders, through retention of earnings, and through stock purchases by those who worked in the business. He saw the following advantages to this approach:

1. Ownership of stock by employees strengthened team spirit. "If they are mutually anxious to make it succeed, the future of the company is bright."
2. Ownership of stock provided individual incentive because employees felt that they would benefit from company profitability.
3. "Ownership is educational." Owners-employees "will know how profits are made and lost; how success is won and lost . . . There are few socialists in the list of stockholders of the nation's industries."

4. "Capital available from within controls expansion." Unwarranted expansion would not occur, Lincoln believed, under his financing plan.
5. "The greatest advantage would be the development of the individual worker. Under the incentive of ownership, he would become a greater man."
6. "Stock ownership is one of the steps that can be taken that will make the worker feel that there is less of a gulf between him and the boss. . . . Stock ownership will help the worker to recognize his [or her] responsibility in the game and the importance of victory."

Until 1980, Lincoln Electric borrowed no money. The company's liabilities consisted mainly of accounts payable and short-term accruals.

The unusual pricing policy at Lincoln was succinctly stated by Willis: "At all times price on the basis of cost, and at all times keep pressure on our cost." This policy resulted in the price for the most popular welding electrode going from 16 cents a pound in 1929 to 4.7 cents in 1938. More recently, the SA-200 welder, Lincoln's largest-selling portable machine, decreased in price from 1958 through 1965. According to Dr. C. Jackson Grayson of the American Productivity Center in Houston, Texas, Lincoln's prices increased only one-fifth as fast as the Consumer Price Index from 1934 to about 1970. This resulted in a welding products market in which Lincoln became the undisputed price leader for the products it manufactured. Not even the major Japanese manufacturers, such as Nippon Steel for welding electrodes and Osaka Transformer for welding machines, were able to penetrate this market.

Substantial cash balances were accumulated each year preparatory to paying the year-end bonuses. The bonuses totaled $54 million for 1988. The money was invested in short-term U.S. government securities and certificates of deposit (CDs) until needed. Financial statements are shown in Exhibit 3. Exhibit 4 shows how company revenue was distributed in the late 1980s.

How Well Did Lincoln Serve Its Stakeholders?

Lincoln Electric differed from most other companies in the importance it assigned to each of the groups it served. Willis identified these groups, in the order of priority ascribed to them, as (1) customers, (2) employees, and (3) stockholders.

Certainly the firm's customers fared well over the years. Lincoln prices for welding machines and welding electrodes were acknowledged to be the lowest in the marketplace. Quality was consistently high. The cost of field failures for Lincoln products was recently determined to be a remarkable 0.04 percent of revenues. The "Fleetweld" electrodes and SA-200 welders were the standard in the pipeline and refinery construction industry, where price was hardly a criterion, for decades. A Lincoln distributor in Monroe, Louisiana, said that he sold several hundred of the popular AC-225 welders, which were warranted for 1 year, but never handled a warranty claim.

Perhaps best-served of all management constituencies were the employees. Not the least of their benefits, of course, were the year-end bonuses,

Exhibit 3
Condensed Comparative Financial Statements ($000,000)*

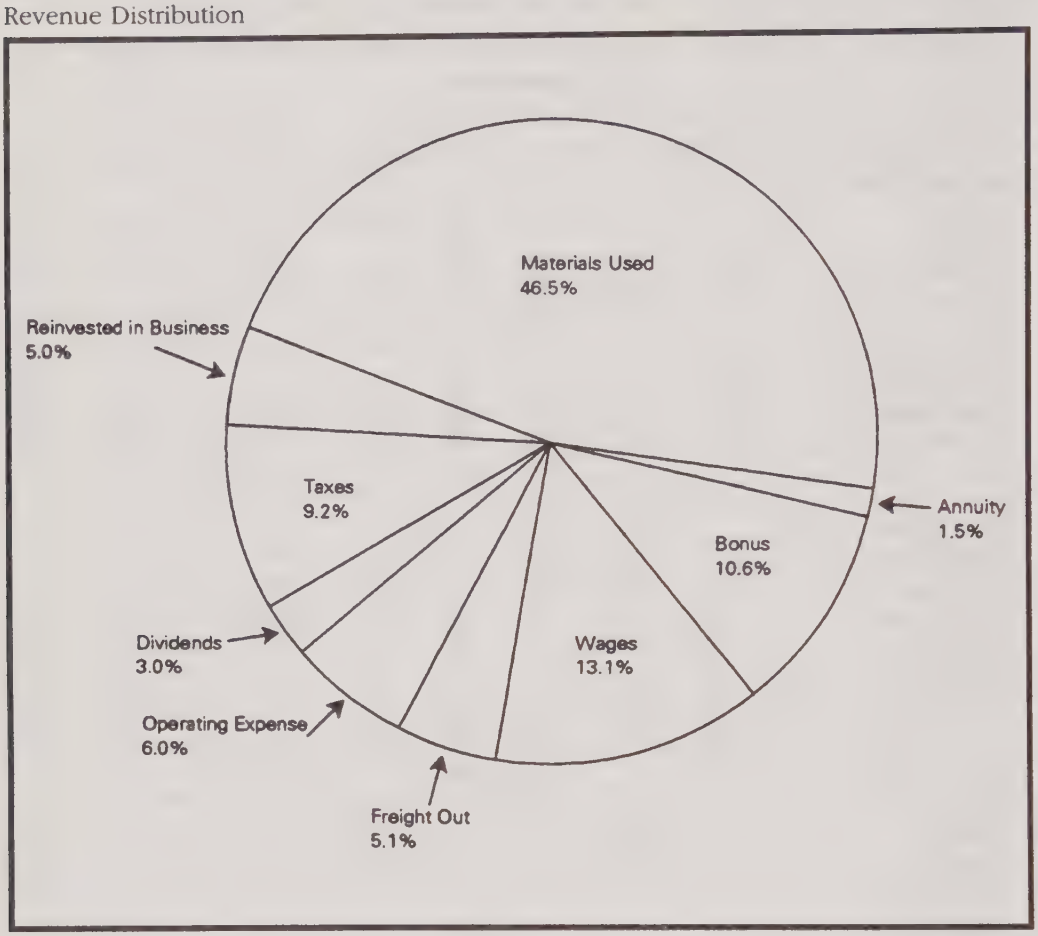
	1979	1980	1981	1982	1983	1984	1985	1986	1987
Balance Sheets									
Assets									
Cash	2	1	4	1	2	4	2	1	7
Bonds and CDs	38	47	63	72	78	57	55	45	41
Notes and accounts receivable	42	42	42	26	31	34	38	36	43
Inventories	38	36	46	38	31	37	34	26	40
Prepayments	1	3	4	5	5	5	7	8	7
Total current assets	121	129	157	143	146	138	135	116	137
Other assets†	24	24	26	30	30	29	29	33	40
Land	1	1	1	1	1	1	1	1	1
Net buildings	22	23	25	23	22	21	20	18	17
Net machinery and equipment	21	25	27	27	27	28	27	29	33
Total fixed assets	44	49	53	51	50	50	48	48	50
Total assets	189	202	236	224	227	217	213	197	227
Claims									
Accounts payable	17	16	15	12	18	15	13	11	20
Accrued wages	1	2	5	4	3	4	5	5	4
Accrued taxes	10	6	15	5	7	4	6	5	9
Accrued dividends	6	6	7	7	7	6	7	6	7
Total claims	33	29	42	28	33	30	31	27	40
Long-term debt		4	5	6	8	10	11	8	8
Total debt	33	33	47	34	41	40	42	35	48
Common stock	4	3	1	2	0	0	0	0	2
Retained earnings	152	167	189	188	186	176	171	161	177
Total shareholders' equity	156	170	190	190	186	176	171	161	179
Total claims	189	202	236	224	227	217	213	197	227
Income Statements									
Net sales	374	387	450	311	263	322	333	318	368
Other income	11	14	18	18	13	12	11	8	9
Income	385	401	469	329	277	334	344	326	377
Cost of goods sold	244	261	293	213	180	223	221	216	239
Selling, general and administrative expenses‡	41	46	51	45	45	47	48	49	51
Incentive bonus	44	43	56	37	22	33	38	33	39
Income before taxes	56	51	69	35	30	31	36	27	48
Income taxes	26	23	31	16	13	14	16	12	21
Net income	30	28	37	19	17	17	20	15	27

* Columns totals may not check, and amounts less than $500,000 (0.5) are shown as zero, due to rounding.
† Includes investment in foreign subsidiaries, $29 million in 1987.
‡ Includes pension expense and payroll taxes on incentive bonus.

which effectively doubled an already average compensation level. The foregoing description of the personnel program and the comments in the Appendix further illustrate the desirability of a Lincoln job.

While stockholders were relegated to an inferior status by James F. Lincoln, they did very well indeed. Recent dividends exceeded $11 a share, and earnings per share approached $30. In January 1980, the price of restricted stock, committed to employees, was $11 a share. By 1989, the stated value at which the company would repurchase the stock if tendered was $201. A check with the New York office of Merrill Lynch, Pierce, Fenner and Smith at that time revealed an estimated price on Lincoln stock of $270 a share, with none

Exhibit 4
Revenue Distribution



being offered for sale. Technically, this price applied only to the unrestricted stock owned by the Lincoln family, a few other major holders, and employees who purchased it on the open market. Risk associated with Lincoln stock, a major determinant of stock value, was minimal because of the small amount of debt in the capital structure, because of an extremely stable earnings record, and because of Lincoln's practice of purchasing the restricted stock whenever employees offered it for sale.

A Concluding Comment

It was easy to believe that the reason for Lincoln's success was the excellent attitude of the employees and their willingness to work harder, faster, and more intelligently than other industrial workers. However, Sabo suggested that appropriate recognition be given to Lincoln executives, whom he credited with carrying out the following policies:

1. Management limited research, development, and manufacturing to a standard product line designed to meet the major needs of the welding industry.
2. New products had to be reviewed by manufacturing and all producing costs verified before the products were approved by management.
3. Purchasing was challenged not only to procure materials at the lowest cost but also to work closely with engineering and manufacturing to ensure that the latest innovations were implemented.
4. Manufacturing supervision and all personnel were held accountable for reduction of scrap, energy conservation, and maintenance of product quality.
5. Production control, material handling, and methods engineering were closely supervised by top management.
6. Management made cost reduction a way of life at Lincoln, and definite programs were established in many areas, including traffic and shipping, where tremendous savings could result.
7. Management established a sales department that was technically trained to reduce customer welding costs. This sales approach and other real customer services eliminated nonessential frills and resulted in long-term benefits to all concerned.
8. Management encouraged education, technical publishing, and long-range programs that resulted in industry growth, thereby assuring market potential for the Lincoln Electric Company.

Sabo wrote, "It is in a very real sense a personal and group experience in faith—a belief that together we can achieve results which alone would not be possible. It is not a perfect system, and it is not easy. It requires tremendous dedication and hard work. However, it does work, and the results are worth the effort."

Appendix

Employee Interviews

Typical questions and answers from employee interviews are presented below. In order to maintain each employee's personal privacy, fictitious names have been given to the interviewees.

Interview 1

Betty Stewart, a 52-year-old high school graduate who had been with Lincoln 13 years and who was working as a cost accounting clerk at the time of interview.

Q: What jobs have you held here besides the one you have now?

A: I worked in payroll for a while, and then this job came open and I took it.

Q: How much money did you make last year, including your bonus?

A: I would say roughly around $25,000, but I was off for back surgery for a while.

Q: You weren't paid while you were off for back surgery?

A: No.

Q: Did the Employees Association help out?

A: Yes. The company doesn't furnish that, though. We pay $8 a month into the Employee Association. I think my check from them was $130 a week.

Q: How was your performance rating last year?

A: It was around 100 points, but I lost some points for attendance [because of] my back problem.

Q: How did you get your job at Lincoln?

A: I was bored silly where I was working, and I had heard that Lincoln kept their people busy. So I applied and got the job the next day.

Q: Do you think you make more money than similar workers in Cleveland?

A: I know I do.

Q: What have you done with your money?

A: We have purchased a better home. Also, my son is going to the University of Chicago, which costs $13,000 a year. I buy the Lincoln stock which is offered each year, and I have a little bit of gold.

Q: Have you ever visited with any of the senior executives, like Mr. Willis or Mr. Hastings?

A: I have known Mr. Willis for a long time.

Q: Does he call you by name?

A: Yes. In fact he was very instrumental in my going to the doctor that I am going to with my back. He knows the director of the clinic.

Q: Do you know Mr. Hastings?

A: I know him to speak to him, and he always speaks, always. But I have known Mr. Willis for a good many years. When I did Plant Two account-

ing, I did not understand how the plant operated. Of course you are not allowed in Plant Two, because that's the Electrode Division. I told my boss about the problem one day and the next thing I knew Mr. Willis came by and said, "Come on, Betty. we're going to Plant Two." He spent an hour and a half showing me the plant.

Q: Do you think Lincoln employees produce more than those in other companies?

A: I think with the incentive program the way that it is, if you want to work and achieve, then you will do it. If you don't want to work and achieve, you will not do it no matter where you are. Just because you are merit-rated and have a bonus, if you really don't want to work hard, then you're not going to. You will accept your 90 points or 92 or 85 because, even with that, you make more money than people on the outside.

Q: Do you think Lincoln employees will ever join a union?

A: I don't know why they would.

Q: So you say that money is a very major advantage?

A: Money is a major advantage, but it's not just the money. It's the fact that having the incentive, you do wish to work a little harder. I'm sure that there are a lot of men here who, if they worked some other place, would not work as hard as they do here. Not that they are overworked—I don't mean that—but I'm sure they wouldn't push.

Q: Is there anything that you would like to add?

A: I do like working here. I am better off being pushed mentally. In another company if you pushed too hard, you would feel a little bit of pressure, and someone might say. "Hey, slow down; don't try so hard." But here you are encouraged, not discouraged.

Interview 2

Ed Sanderson, a 23-year-old high school graduate who had been with Lincoln 4 years and who was a machine operator in the Electrode Division at the time of the interview.

Q: How did you happen to get this job?

A: My wife was pregnant, and I was making three bucks an hour and one day I came here and applied. That was it. I kept calling to let them know I was still interested.

Q: Roughly what were your earnings last year including your bonus?

A: $45,000

Q: What have you done with your money since you have been here?

A: Well, we've lived pretty well, and we bought a condominium.

Q: Have you paid for the condominium?

A: No, but I could.

Q: Have you bought your Lincoln stock this year?

A: No, I haven't bought any Lincoln stock yet.

Q: Do you get the feeling that the executives here are pretty well thought of?

A: I think they are. To get where they are today, they had to really work.

Q: Wouldn't that be true anywhere?

A: I think more so here because seniority really doesn't mean anything. If you work with a guy who has 20 years here, and you have 2 months and you're doing a better job, you will get advanced before he will.

Q: Are you paid on a piece-rate basis?

A: My gang does. There are nine of us who make the bare electrode, and the whole group gets paid based on how many electrodes we make.

Q: Do you think you work harder than workers in other factories in the Cleveland area?

A: Yes, I would say I probably work harder.

Q: Do you think it hurts anybody?

A: No, a little hard work never hurts anybody.

Q: If you could choose, do you think you would be as happy earning a little less money and being able to slow down a little?

A: No, it doesn't bother me. If it bothered me, I wouldn't do it.

Q: Why do you think Lincoln employees produce more than workers in other plants?

A: That's the way the company is set up. The more you put out, the more you're going to make.

Q: Do you think it's the piece rate and bonus together?

A: I don't think people would work here if they didn't know that they would be rewarded at the end of the year.

Q: Do you think Lincoln employees will ever join a union?

A: No.

Q: What are the major advantages of working for Lincoln?

A: Money.

Q: Are there any other advantages?

A: Yes, we don't have a union shop. I don't think I could work in a union shop.

Q: Do you think you are a career man with Lincoln at this time?

A: Yes.

Interview 3

Roger Lewis, a 23-year-old Purdue graduate in mechanical engineering who had been in the Lincoln sales program for 15 months and who was working in the Cleveland sales office at the time of the interview.

Q: How did you get your job at Lincoln?

A: I saw that Lincoln was interviewing on campus at Purdue, and I went by. I later came to Cleveland for a plant tour and was offered a job.

Q: Do you know any of the senior executives? Would they know you by name?

A: Yes, I know all of them—Mr. Hastings, Mr. Willis, Mr. Sabo.

Q: Do you think Lincoln salespeople work harder than those in other companies?

A: Yes, I don't think there are many salespeople for other companies who are putting in 50- to 60-hour weeks. Everybody here works harder. You can go out in the plant, or you can go upstairs, and there's nobody sitting around.

Q: Do you see any real disadvantage to working at Lincoln?

A: I don't know if it's a disadvantage, but Lincoln is a spartan company, a very thrifty company. I like that the sales offices are functional, not fancy.

Q: Why do you think Lincoln employees have such high productivity?

A: Piecework has a lot to do with it. Lincoln is smaller than many plants, too; you can stand in one place and see the materials come in one side and the product go out the other. You feel a part of the company. The chance to get ahead is important, too. They have a strict policy of promoting from within, so you know you have a chance. I think in a lot of other places you may not get as fair a shake as you do here. The sales offices are on a smaller scale, too. I like that; I tell someone that we have two people in the Baltimore office, and they say 'You've got to be kidding.' It's smaller and more personal. Pay is the most important thing. I have heard that this is the highest-paying factory in the world.

Interview 4

Jimmy Roberts, a 47-year-old high school graduate, who had been with Lincoln 17 years and who was working as a multiple-drill press operator at the time of the interview.

Q: What jobs have you had at Lincoln?

A: I started out cleaning the men's locker room in 1967. After about a year I got a job in the flux department, where we make the coating for welding rods. I worked there for 7 or 8 years and then got my present job.

Q: Do you make one particular part?

A: No, there are a variety of parts I make—at least twenty-five.

Q: Each one has a different piece rate attached to it?

A: Yes.

Q: Are some piece rates better than others?

A: Yes.

Q: How do you determine which ones you are going to do?

A: You don't. Your supervisor assigns them.

Q: How much money did you make last year?

A: $53,000.

Q: Have you ever received any kind of award or citation?

A: No.

Q: Was your rating ever over 110?

A: Yes. For the past 5 years probably, I made over 110 points.

Q: Is there any attempt to let the others know . . . ?

A: The kind of points I get? No.

Q: Do you know what they are making?

A: No. There are some who might not be too happy with their points and they might make it known. The majority, though, do not make it a point of telling other employees.

Q: Would you be just as happy earning a little less money and working a little slower?

A: I don't think I would—not at this point. I have done piecework all these years, and the fast pace doesn't really bother me.

Q: Why do you think Lincoln productivity is so high?

A: The incentive thing—the bonus distribution. I think that would be the main reason. The paycheck you get every 2 weeks is important too.

Q: Do you think Lincoln employees would ever join a union?

A: I don't think so. I have never heard anyone mention it.

Q: What is the most important advantage of working here?

A: Amount of money you make. I don't think I could make this type of money anywhere else, especially with only a high school education.

Q: As a black person, do you feel that Lincoln discriminates in any way against blacks?

A: No. I don't think any more so than any other job. Naturally, there is a certain amount of discrimination, regardless of where you are.

Interview 5

Joe Trahan, a 58-year-old high school graduate who had been with Lincoln 39 years and who was employed as a working supervisor in the tool room at the time of the interview.

Q: Roughly what was your pay last year?

A: Over $56,000; salary, bonus, stock dividends.

Q: How much was your bonus?

A: About $26,000.

Q: Have you ever gotten a special award of any kind?

A: Not really.

Q: What have you done with your money?

A: My house is paid for—and my two cars. I also have some bonds and the Lincoln stock.

Q: What do you think of the executives at Lincoln?

A: They're really top-notch.

Q: What is the major disadvantage of working at Lincoln Electric?

Q: I don't know of any disadvantage at all.

A: Do you think you produce more than most people in similar jobs with other companies?

A: I do believe that.

Q: Why is that? Why do you believe that?

A: We are on the incentive system. Everything we do, we try to improve to make a better product with a minimum of outlay. We try to improve the bonus.

Q: Would you be just as happy making a little less money and not working quite so hard?

A: I don't think so.

Q: Do you think Lincoln employees would ever join a union?

A: I don't think they would ever consider it.

Q: What is the most important advantage of working at Lincoln?

A: Compensation.

Q: Tell me something about Mr. James Lincoln, who died in 1965.

A: You are talking about Jimmy, Sr. He always strolled through the shop in his shirt sleeves. Big fellow. Always looked distinguished. Gray hair. Friendly sort of guy. I was a member of the Advisory Board one year. He was there each time.

Q: Did he strike you as really caring?

A: I think he always cared for people.

Q: Did you get any sensation of a religious nature from him?

A: No, not really.

Q: And religion is not part of the program now?

A: No.

Q: Do you think Mr. Lincoln was a very intelligent man, or was he just a nice guy?

A: I would say he was pretty well educated. A great talker—always right off the top of his head. He knew what he was talking about all the time.

Q: When were bonuses for beneficial suggestions done away with?

A: About 18 years ago.

Q: Did that hurt very much?

A: I don't think so, because suggestions are still rewarded through the merit rating system.

Q: Is there anything you would like to add?

A: It's a good place to work. The union kind of ties other places down. At other places, electricians only do electrical work, carpenters only do carpenter work. At Lincoln Electric we all pitch in and do whatever needs to be done.

Q: So a major advantage is not having a union?

A: That's right.

Endnotes

1. Gene Bylinsky, "America's Best-Managed Factories," *Fortune*, May 28, 1984, p. 16.

This case was developed by Dr. Arthur D. Sharplin of McNeese State University as a basis for class discussion rather than to illustrate either effective or ineffective handling of an administrative situation.

23

Supervisor/Subordinate Survey

Instructions: Complete this survey prior to class discussion. Compare your results with those of others in the class.

As a supervisor, to which of the following "rights" do you believe your subordinates are entitled?

Right to:	Professional Subordinates	Non-Professional Subordinates
1. have a job	_____	_____
2. not be fired without a "cause"	_____	_____
3. resign without giving notice	_____	_____
4. resign after giving notice	_____	_____
5. have all complaints reviewed	_____	_____
6. freedom of speech in the workplace	_____	_____
7. freedom of work-related speech outside the workplace	_____	_____
8. privacy in the workplace	_____	_____
9. privacy outside the workplace	_____	_____
10. safe workplace	_____	_____
11. information about workplace safety/health issues	_____	_____
12. be evaluated solely on ability and achievement	_____	_____
13. have membership in a "traditionally disadvantaged" group (based on sex, race, disability, etc.) considered in hiring and promotion decisions	_____	_____
14. join or form a labor union	_____	_____
15. have the following non-salary/ non-wage benefits	_____	_____
a. free or subsidized health insurance	_____	_____
b. free or subsidized life insurance	_____	_____
c. paid vacation	_____	_____
d. paid leave for family concerns (birth, illness, etc.)	_____	_____

Right to:	Professional Subordinates	Non-Professional Subordinates
e. unpaid leave for family concerns (birth, illness, etc.)	_____	_____
f. paid sick leave	_____	_____
g. unpaid sick leave	_____	_____
h. child care benefits	_____	_____
i. subsidized education	_____	_____
j. flexible scheduling of work hours	_____	_____

As a supervisor, to which of the following "rights" do you believe you are entitled, with respect to subordinates?

Right to:	Professional Subordinates	Non-Professional Subordinates
1. terminate subordinate's job at any time	_____	_____
2. be given notice prior to subordinate's resignation	_____	_____
3. change subordinate's job to suit firm constraints	_____	_____
4. negotiate with individuals, rather than their union representatives	_____	_____
5. limit freedom of speech in the workplace	_____	_____
6. limit freedom of work-related speech outside the workplace	_____	_____
7. collect work-related information about employees	_____	_____
8. collect non-work-related information (e.g. marital problems) about employees	_____	_____
9. monitor non-workplace behavior (e.g. smoking or drinking)	_____	_____
10. give random tests for drug use	_____	_____
11. give targeted tests for drug use (with cause)	_____	_____
12. give polygraph or other honesty tests	_____	_____
13. electronically monitor computer, telephone and other work	_____	_____
14. disregard subordinate's membership in a "traditionally disadvantaged" group (based on sex, race, disability, etc.) in hiring and promotion decisions	_____	_____
15. offer different non-salary/non-wage benefits to different subordinates	_____	_____

24

Wealth and Poverty

Rogene A. Buchholz

The market system offers large rewards, in some cases, to winners of the competitive race, but it can also impose severe penalties on some of the losers. Those losers often fall so far behind that they end up in a seriously deprived condition. They have so few and such low-quality resources at their disposal that the market places a very low value on what they do have to offer. The market system often promotes wide disparities in income and wealth, allowing the "haves" to amass increasing wealth and the "have nots" to fall further into relative poverty.

Often, people end up in this condition through no fault of their own, as poverty is most likely a function of slack labor markets and general economic and social conditions. During the depression, for example, there were simply not enough jobs to go around, even for skilled workers who were willing and able to provide for themselves. Even in prosperous times, there are sometimes not enough jobs for young people and others who have not had a chance to develop skills and gain experience useful to employers. Discrimination plays a role in poverty by preventing some people from getting jobs commensurate with the skills and ability they do have. There are never enough good-paying jobs for people with severe physical and emotional handicaps who could still be productive. The downsizing and restructuring of American industry throws many people out of jobs and necessitates training for new opportunities.

An unregulated market system can produce inhumane results, locking some people into a vicious cycle of poverty and preventing them from ever really entering into the race for the rewards society has to offer. As Arthur Okun states: "Vast disparities in results—living standards, income, wealth—inevitably spawn serious inequalities in opportunity that represent arbitrary handicaps and head starts . . . The children of the poor are handicapped in many ways—their nutrition, their education, their ability to get funds to start businesses and buy homes, and their treatment on many of the hiring lines for both private and public jobs."[1]

Poverty can become a vicious cycle that is perpetuated from one generation to the next. Children born into conditions of poverty have a high probability of remaining in poverty because of a lack of good education, poor health, psychological depression, and more, all of which places them at a severe disadvantage to people born into better conditions. Such disadvantaged people do not have much to offer employers and thus the market places a low value on their services.

A commitment to equality of opportunity requires, says Okun, some correction of the inequality of results that an unregulated market system produces. Severe poverty cannot be accepted in a democratic society. Even if the race is fair, condemnation to a life of deprivation is not necessarily a fair penalty for the losers. Such a result is not consistent with the goals and values of a democratic society.[2]

> . . . Poverty cannot be ignored by a society that proclaims democratic values, insisting upon the worth of all its citizens and the equality of their political and social rights. Our commitment to freedom of speech, equality of suffrage, and equality before the law rests on a broader commitment to human values that is violated by the persistence of economic misery in an affluent society. I cannot imagine how a sane society could decide deliberately to guarantee every citizen a fair trial before a judge and jury and at the same time permit some citizens to be condemned to death by the marketplace.[3]

Almost all modern industrial societies have some kind of welfare system designed to alter unequal market outcomes through public policy measures.[4] Such outcomes are unacceptable and are changed by a system of transfer payments that takes money from some groups in society through taxation and gives it to other groups in the form of benefits. Modern industrial societies also have programs designed to help disadvantaged people gain education and training so they can have something valuable to offer employers or can start their own businesses to compete in the marketplace.

The welfare system in the United States took shape in the New Deal era, when the goals of humanitarian aid to people in need and the goals of economic management were highly compatible. The eventual acceptance of Keynesian economic theories dispelled the sense of impotence and resignation that had accompanied economic downturns in the past, and destroyed the underlying fatalism that business cycles must run their course no matter what their toll in human suffering. These theories legitimized federal efforts to improve the functioning of a market system during a recession or depression and helped extend the notion of government responsibility to those who found themselves in desperate economic conditions. Public recognition and support of a federal role in assisting the least fortunate members of society has remained relatively strong since that time even when the economy is growing and most people are prospering.[5]

The New Deal saw the beginning of income transfer programs and collective bargaining on a large scale, which helped to check the tendency of

free markets to promote wide disparities in income and wealth. Transfer programs provided cash assistance and in-kind programs for those who were in need, and collective bargaining enabled workers to obtain higher incomes, better working conditions, and greater job security. These interventions in free market outcomes constituted an explicit recognition that an unregulated system did not result in a morally acceptable distribution of income and wealth nor did it provide meaningful opportunities to those at the bottom of the income ladder.[6]

The Nature of Poverty

Poverty can mean many different things depending on who is doing the defining and what policies are being considered. Poverty can mean a shortage of money to buy the essentials that people or families need to support themselves. The official poverty level established by the U.S. government is based on an estimation of the level of income that it would take for various categories of people, such as a family of four, to provide themselves with a minimum level of food, clothing, shelter, and other essentials. These estimates are made for single people as well as for other size families, but the family of four is the most widely cited figure.

Others argue that to view poverty as merely a lack of income is much too unrealistic and simplistic. George L. Wilber, for example, views poverty as a system that has multiple properties capable of measurement. He defines this system as the relative lack of resources and/or the inability to utilize resources.[7] The word "relative" is important, as Wilber also points out that poverty can be defined in either relative or absolute terms. When people's basic needs for food, clothing, shelter, and medical care are not met, these people are in need in an absolute sense. But whether or not these basic needs are taken care of, people may or may not feel "relatively deprived," as this feeling depends on one's position with respect to the relevant reference group in society at any particular time and place.[8]

Defining poverty solely in terms of income or subsistence levels does not seem to capture the entire meaning of the concept. Martin Rein, of the Bryn Mawr College School of Social Work, argues that even "subsistence measures of poverty cannot claim to rest solely on a technical or scientific definition of nutritional adequacy. Values, preferences, and political realities influence the definition of subsistence."[9] What is adequate for one person may not be adequate for another. Thus no absolute measurement of poverty in subsistence terms is possible either.

Others make a distinction between economic poverty, which is based on the income level of the poor, and material poverty, which tells us about their health and welfare. Economic measures commonly used to depict the degree of poverty in the United States provide little insight into the physical and material well-being of poor people. Traditional indicators of deprivation, such as health and nutrition, might give us a less ambiguous and more consistent idea of how the poor are doing. Information about life expectancy, infant mortality, suicides, birth weights, undernutrition, and diet may tell us more

about the material condition of those in poverty than conventional statistics about income.[10]

Some scholars have developed the idea that there is something called a culture of poverty, which can help in understanding the dynamics of poverty and also has policy implications. The culture of poverty, as described by Oscar Lewis, for example, is both an adaption and a reaction of the poor to their marginal position in a class-stratified, highly individuated, capitalistic society. It represents an effort to cope with feelings of hopelessness and despair that develop from the realization of the improbability of achieving success in terms of the values and goals of the larger society.[11]

> People with a culture of poverty produce very little wealth and receive very little in return. They have a low level of literacy and education, do not belong to labor unions, are not members of political parties, generally do not participate in the national welfare agencies, and make very little use of banks, hospitals, department stores, museums, or art galleries. They have a critical attitude toward some of the basic institutions of the dominant classes, hatred of the police, mistrust of government and those in high position, and a cynicism that extends even to the church. These factors give the culture of poverty a high potential for protest and for being used in political movements aimed against the existing social order.[12]

This culture of poverty is thus an adaption to a set of economic and social conditions and tends to perpetuate itself from generation to generation. Children born into the culture of poverty absorb the basic values and attitudes of this subculture and are not psychologically equipped even to take advantage of more favorable conditions or better opportunities that may occur in their lifetime. They tend to remain in the culture of poverty because it has become a way of life for them and not just a condition to be overcome. This concept has important implications for public policy measures designed to eliminate poverty.

Another way to look at poverty is to consider it as a cyclical phenomenon, rather than as a cultural condition. The poor get sick more than other people, live in unhealthy conditions, have inadequate diets, cannot get decent medical care or a good education. Thus they cannot get and hold good-paying jobs to earn a decent income, which means they cannot afford good housing, medical care, and a decent education. Poverty becomes a vicious cycle that tends to perpetuate itself, but the cycle can be broken into somewhere. If poor people could be given a good job, for example, and receive the extra training and attention necessary to keep it, they might be able to climb out of poverty, breaking out of the cycle. This view of poverty has other policy implications.

> The argument between those who think that poverty can best be eliminated by providing jobs and other resources and those who feel that cultural obstacles and psychological deficiencies must be overcome as well is ultimately an argument about social change, about the psychological readiness of people to respond to change, and about the role of culture in

> change. The advocates of resources are not concerned explicitly with culture, but they do make a cultural assumption: Whatever the culture of the poor, it will not interfere in people's ability to take advantage of better opportunities for obtaining economic resources. They take a situational view of social change and of personality: that people respond to the situations—and opportunities—available to them and change their behavior accordingly. Those who call attention to cultural (and psychological) obstacles, however, are taking a cultural view of social change, which suggests that people react to change in terms of prior values and behavior patterns and adopt only those changes that are congruent with their culture.[13]

If poverty has aspects of a culture, dealing with it and helping people to climb out of poverty is a much more serious problem than if it is only a cyclical phenomenon. Attempting to change people's values and ingrained habits and behavior patterns is much more difficult than is simply developing programs to improve health, education, or job opportunities. And yet such programs are likely to fail if they are implemented in a cultural situation where the value assumptions on which they are based do not hold true. If people in poverty do not share the same values regarding work and wealth as people in the larger society, then programs designed to help them climb into the mainstream of society may be counterproductive.

The Extent of Poverty

The official figures with regard to poverty in the United States over the past several years are rather depressing. The figures for 1982 showed 34.4 million or 15 percent of the population below the government's official poverty line, the highest poverty rate since 1965, and the fourth consecutive annual increase. The 1982 figures reflected the impact of the recession and cutbacks in entitlement programs made by the Reagan administration.[14] The Census Bureau's figures for 1983 showed that poverty had again increased to 15.2 percent from 15 percent the year before, the highest level since the 17.3 percent recorded in 1965. The number of poor people increased by 900,000 to 35.3 million. While the bureau didn't consider this increase statistically significant, it was attributed to the increase in the number of people living alone and the lingering effects of the deep and lengthy 1981–82 recession.[15]

However, in 1984, the poverty rate actually dropped, according to the official figures, to 14.4 percent, a decline of 1.8 million people to a total of 33.7 million. This was the first statistically significant decline since 1976; it was attributed by the administration to the president's economic policies. Median family income rose to an inflation-adjusted $26,430, a jump of 3.3 percent from the year before. This was the fastest rate of gain since 1972 and was the second consecutive increase. Poverty among the elderly fell to its lowest level since the Census Bureau began tracking this indicator. The improvement was broad-based, with even the African American poor showing significant gains.[16]

Further gains were made in 1985 as the poverty rate declined to 14 percent. In 1985, 33.1 million Americans lived below the poverty threshold, but this decrease of 600,000 from the year before was statistically insignificant. Median family income rose only 1.3 percent to $27,735 and was the smallest gain in 3 consecutive years of increases.[17] In 1986, the poverty rate declined further to 13.6 percent, the third year in a row the rate had declined, and median family income increased significantly faster than inflation.[18] The poverty rate continued to decline, reaching 13.4 percent in 1987 and 13.1 percent in 1988, but the Census Bureau said the 1988 drop was not statistically significant (Figure 1). The poverty threshold for 1988 was $12,092 for a family of four people.[19]

As a result of the decline in poverty, the number of people living below the poverty line declined by about 500,000 for the year. Per capita income hit a record in 1988, rising 1.7 percent after adjustment for inflation. But the median income of American families fell 0.2 percent, the first time it failed to rise in 6 years. Experts said the divergence in the two measures reflected changes in family size and structure, including the rising number of female-headed families and a sharp increase in income reported by Americans who were not living in families. Income levels rose sharply in the Northeast and Midwest and fell slightly in the South and parts of the West.[20]

The poverty rate for children under 18 years old dropped to 19.7 percent in 1988 from 20.5 percent the year before but remained far higher than it was a decade earlier. These figures reflected a continuing problem with child poverty that boded ill for the future of American society. The increases of poverty in this category were said to be the result of a drop in the real earn-

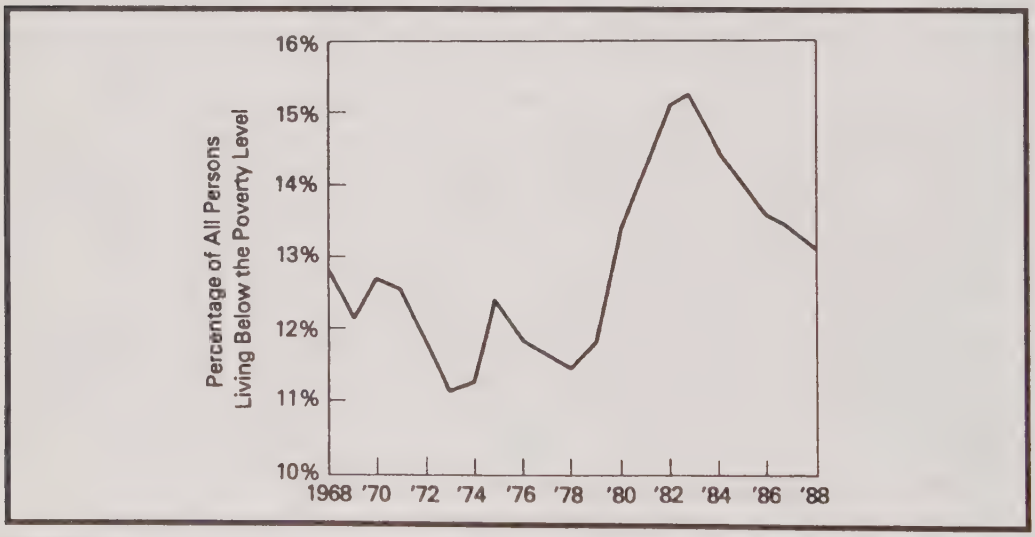


Figure 1
Poverty Rate, 1968–1988
Source: U.S. Department of Commerce, *Statistical Abstract of the United States, 1989,* 109th ed. (Washington, D.C.: U.S. Government Printing Office, 1988), p. 452.

ings of many working Americans over the past several years, the rise in the incidence of out-of-wedlock births and of female-headed households, and cutbacks in the major welfare programs aimed at the young.[21] An index of the social health of children and youth which included infant mortality, child abuse, children living in poverty, teenage suicide, teenage drug abuse, and high school drop-outs, showed a decline to 37 in 1987 from a high of 72 in 1973, providing further evidence of a problem with children's health in this country.[22]

The problem of families headed by females and the child poverty that results is a social welfare challenge likely to plague society for many years to come. This so-called feminization of poverty is a deep, long-term poverty problem. Mothers without husbands and the children of these women are the only poverty category whose total number is currently higher than when poverty first began to be officially measured in 1959.[23] Teenage pregnancies are one of the reasons for this increase in child poverty, as many of these children are raised in fatherless homes with little economic opportunity. In 1987, the United States had the highest rate of teenage pregnancy in the developed world. One out of six newborn children was the child of a teenager, and fewer than half of these teenage mothers had graduated from high school.[24]

This problem is especially prevalent in the African American community. As of 1987, some 60 percent of African American children were born out of wedlock, and African American families were three and one-half times as likely as white families to be headed by a female. More than three-fourths of poor African American families were headed by women. This disparity explains much of their lag in economic and social status, as female-headed African American families suffer from crime and drug abuse to a larger extent than other groups. Most single mothers with children under age six do not work, and given the high costs of day care for very young children, relatively few could ever work effectively. Thus they have no choice but to turn to welfare for support.[25]

This increase in child poverty has resulted in a disparity between children and elderly people, who were previously a major poverty problem. As child poverty has increased, poverty among the elderly has fallen sharply, since the elderly were able to get the attention of lawmakers and win out over children and their advocates in the battle for society's resources. Because of cost-of-living increases, the buying power of the average Social Security check has jumped about 25% since 1970, while during the same period, the buying power of Aid to Families with Dependent Children (AFDC) checks has dropped by a third. The poverty rate for the elderly is lower than for the rest of the nation as a whole and much lower if in-kind benefits such as food stamps and medical care are considered.[26]

The Urban League in its 1990 report on the "State of Black America" report stated that in a few respects the state of African Americans is improving, but that in most areas the gains are only marginal. For the most part the state of black America remains critical.[27] The Census Bureau figures for 1988

showed that 31.6 percent of African Americans lived in poverty compared with 10.1 percent for whites and 26.8 percent for Hispanics. In constant dollars, the median income for African American married families was $27,722 in 1978 and fell to $27,182 in 1987, whereas parallel figures for white married families showed a slight increase. In 1978, 8.4 percent of African American families had incomes under $5,000 per year, but by 1987, that figure had grown to 13.5 percent. The average income of the poorest fifth of African American families plunged 23.6 percent during this same time period.[28] In 1989, the average African American-family income was only 57 percent that of whites, and the African American unemployment rate was stuck at about double that of whites. Median African American household wealth was one-eleventh that of whites.[29]

A Census Bureau study released in 1986 found that the typical white American household in 1984 had a net worth of almost $40,000, about 12 times greater than the figure for the typical African American household. Almost one-third of all African American families reported they owned no assets at all or had a negative net worth; more than half (54 percent) had assets of less than $5,000. In comparison, 11 percent of white families had no assets or a negative net worth, and only 26 percent owned less than $5,000 in assets. This disparity was due partly to the large number of African American households headed by women and partly to low African American income over generations, which has retarded the accumulation of wealth.[30]

These economic conditions contribute to instability among African American families and mean that African American children are more likely than whites to have no father at home, to be born out of wedlock, to drop out of school, and to be victimized by the divorce of their parents. One out of 12 African American children lives with neither parent. The crumbling African American family is seen as a severe problem that may produce a lost generation of African American youths unequipped to enter the labor force or to form their own families. Thousands of African American youths may be drifting into a netherworld of unemployment, welfare, and crime from which they will not escape. African American leaders have declared this instability a major concern that threatens the survival of African American culture.[31]

More and more evidence indicated that this African American underclass was growing and represented a serious problem not only for African Americans, but for the entire society. These people were isolated from the nation's economic and social mainstream, and constituted a culture of poverty that was difficult to fathom. The underclass was composed of unemployed males and welfare mothers concentrated in crime-ridden, desperately poor, inner-city neighborhoods and was estimated to be at least 1.5 million and growing. This problem may have been exacerbated by the civil rights legislation of the 1960s, as middle-class African Americans who could take advantage of new job and housing opportunities fled the ghettos, leaving behind the truly disadvantaged, who no longer had role models to tell them about work opportunities.[32]

In the mid-1980s, a new aspect of poverty appeared in the plight of the homeless, those in our society with no fixed address who wandered the streets and found shelter in bus stations, cardboard boxes, or whatever else

was available. The immediate cause of the problem was a shortage of affordable housing. But diverse circumstances helped to cause the problem. Some of the homeless were mentally ill, others were poor families who had no money to pay rent, and still others were single men without work or family. Estimates of the homeless population ranged from 250,000 to more than 3 million. Any estimate was suspect as homelessness may be temporary, episodic, or long-term.[33]

Federal support for housing was slashed 77 percent, from $32.2 billion in 1981 to $7.5 billion in 1988. The Department of Housing and Urban Development authorized the construction of only 88,136 subsidized dwellings in 1987, compared with more than 224,000 in 1981. Some 2.5 million units of low-income housing disappeared between 1980 and 1988 through a combination of market forces and government indifference. Tenements that provided housing for the disadvantaged were torn down or renovated to make way for high-priced apartments or high-rise office buildings. During the past decade, half of the single-room occupancy hotels in the nation were lost. These often provided the housing of last resort for the poor. An additional 200,000 units of low-income housing are expected to disappear over the next 5 years as loans expire from the tax-break programs of the 1970s and 1980s. The result could be hundreds of thousands more people in shelters.[34] Clearly this is an aspect of poverty that will continue to be a serious national problem.

Other Aspects of Poverty

The Census Bureau figures are often criticized as being inaccurate in measuring the real extent of poverty in the United States. The official poverty statistics, it is said, overstate the problem because of the way poverty is defined and measured. The official definition of poverty begins with the concept of a nutritionally adequate diet as estimated by the Department of Agriculture. This concept is then extended by a food-total-expenditure multiplier to cover a minimum adequate amount of other necessities. Families with money income that is insufficient to purchase this minimum amount of food and other necessities are officially considered low-income families and are included as such in the *Current Population Surveys* (CPS) published by the Bureau of the Census.

The problem is that the measuring rod used in the *Current Population Survey* is only money income—no attempt is made to measure the impact of such in-kind programs as food stamps and Medicaid, which were among the fastest-growing part of transfer payments during the 1970s and now constitute about 60 percent of the transfer-payment budget. When these in-kind programs were small, this omission was of minor consequence. But in recent years, their exclusion results in a gross distortion of the poverty problem that has not been corrected despite many attempts to raise the issue and draw attention to the problem.[35]

One of the first studies that attempted to deal with this distortion was conducted by Morton S. Paglin, who computed these in-kind transfers at market value for three program areas: housing, food and nutrition, and medical

services. When these estimates are factored into the final estimates of overall poverty, some dramatic differences show up when compared with the official poverty statistics. Figure 2 shows that when in-kind transfers are taken into account, poverty continued to decline throughout the entire 1959–75 period instead of leveling off from 1968 to 1975 as the official CPS figures suggest. The 1968–75 period was one in which the market value of in-kind transfers in the housing, food and nutrition, and medical areas went from $3.5 billion to $14.1 billion, making quite a difference in the final outcome. As shown in Figure 2, the census and final revised figures were much closer together in 1959 than in 1975, again reflecting the impact of in-kind programs. The census cash-income measure of poverty, Paglin concludes, has departed further and further from reality.[36]

If in-kind subsidies are included, a *Fortune* article stated that U.S. poverty drops to about half the official level. This estimate is based on valuing the subsidies conservatively at their calculated worth to recipients. If these subsidies are valued at their full cost to the government, the article states that it is possible to argue that poverty virtually disappeared in the

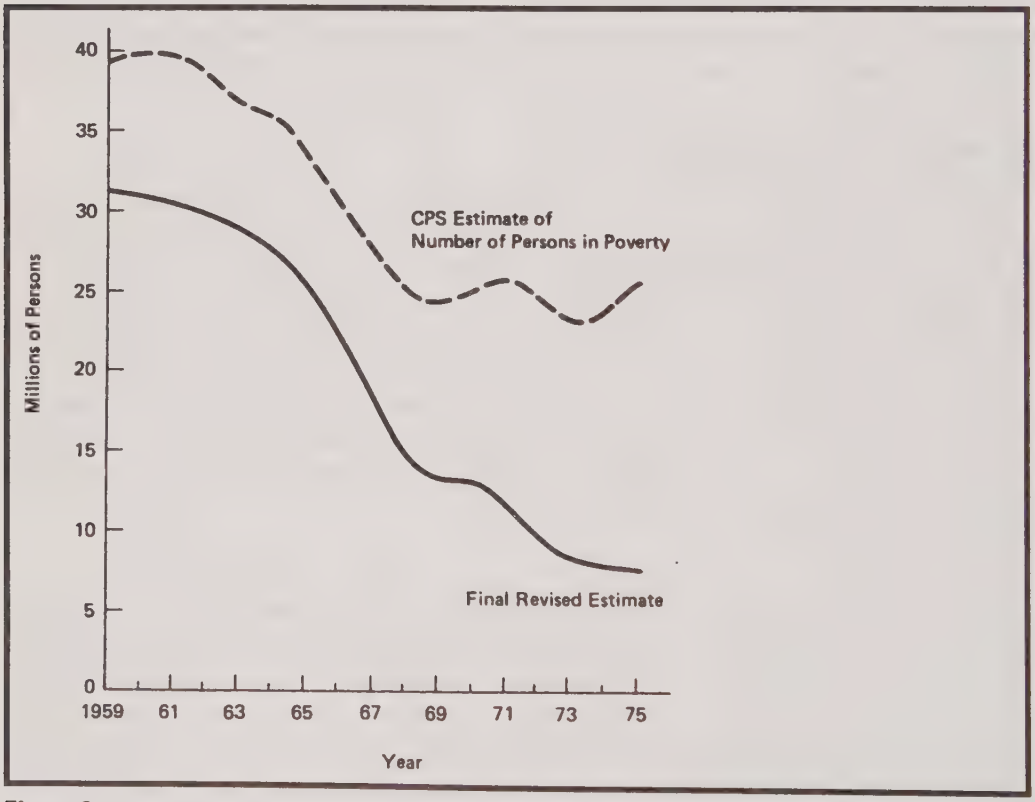


Figure 2
Persons in Poverty, 1959–1975
(Official and final revised estimates after all in-kind transfers have been taken into account.)

Source: Morton Paglin, "Poverty in the United States: A Reevaluation," *Policy Review,* No. 8 (Spring 1979), p. 23. Reprinted with permission.

United States. Based on this procedure, G. William Hoagland, a congressional budget analyst, concluded that poverty fell to only 4.1 percent of the population in 1980. These kinds of estimates led some to conclude that the war on poverty had been won.[37]

Another report released by the Census Bureau itself in 1986 concluded that the number of Americans living in poverty may be as much as 11.5 million lower than previous official figures indicated. Computing the value of noncash federal assistance nine different ways, the bureau estimated that between 21.5 million and 30.4 million Americans were poor in 1985, reflecting a poverty rate of between 9.1 and 12.8 percent of the population. These noncash benefits were valued at $56.2 billion for 1985 compared with $30.2 billion for cash assistance. Fifteen years ago, these two types of benefits were nearly equal. Inclusion of this noncash assistance produced a lower count of people in poverty than the official figures for every year since 1979, reflecting the importance of this component.[38]

In 1984, a study was released by the Survey Research Center of the University of Michigan that introduced yet another dimension into the debate about the extent of poverty in the United States. Studies of poverty do not say anything about income dynamics and assume that the poor are a group of people who are always at the bottom of the income ladder and are incapable of changing their relative status in society. The evidence contradicts this assumption, however, and shows that the society is characterized by a great deal of income mobility. Income dynamics refers to the processes by which individuals and families change their economic fortunes and may tell us something quite different from what their economic fortunes are at any one point in time.[39]

By looking into the dynamics of poverty, the persistently poor represent a much smaller population than had previously been believed. More than half the people in poverty in any one year remain in this status for only one or two years. While one in every four Americans experienced poverty in the 1969–78 decade, most did not remain in this status very long. The persistently poor who are locked into their status make up no more than 1–3 percent of the total population of the nation (Figure 3). These are most likely to be the elderly, African American, rural, and southern, and come from families headed by women.

Thus more than half the poor in any given year represent a "turnover population" of the temporarily poor. Welfare programs have not created a poverty caste but provide short-term help to those who face temporary misfortune and serve as a safety net to those few who are burdened with severe economic handicaps. Furthermore, there is evidence that income mobility is intergenerational in the United States, as less than half of young adults with parents in the lowest income group remained there themselves. These findings offer a real challenge to social scientists and policymakers alike in understanding the nature of poverty and in developing policies to deal with the problem.

Workfare: Providing Economic Opportunities

One approach to the problem of poverty is to try to increase the range of economic opportunities available to poor people so they can help themselves out of poverty and work their way into the mainstream of society. Such programs are based on the assumption that poverty is a condition to be overcome and not a cultural phenomenon, and that poor people need assistance to break out of the cycle. This assistance can take the form of helping disadvantaged people to become more employable in the marketplace, providing help for starting small businesses by providing economic opportunities (particularly to minority entrepreneurs), and building plants in disadvantaged areas to provide income and jobs for the community.

The immediate cause of poverty for many families is that the adult members of the family do not have full-time work. According to statistics from the Census Bureau, only 17 percent of the heads of poor families worked full time in 1984, and 51 percent did not work at all, even though only 10 percent of them were elderly. Work effort among the poor has fallen since 1959, when 32 percent of poor family heads worked full time and only 31 percent did not work at all, even though 22 percent were elderly. Thus the connection between poverty and nonwork seems to be strong, as nonwork promotes poverty by sharply reducing income.[40]

Employment of the Disadvantaged

Disadvantaged people are shut out of many employment opportunities. Public policy measures aimed at eliminating discrimination in employment are not necessarily going to help them. Many disadvantaged people are white, so

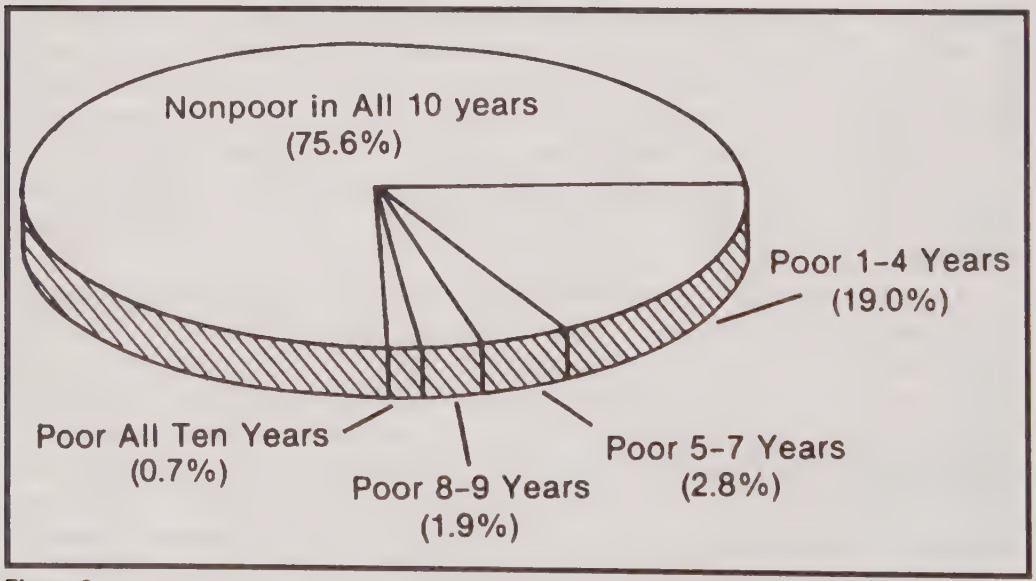


Figure 3
Incidence of Short- and Long-Run Poverty, Using Official Census Bureau Definition of Poverty, 1969–1978

that racial discrimination is not necessarily a factor. They simply do not have much to offer employers by way of skills or experience and thus find it difficult to obtain decent employment to provide for themselves or their families. This lack of skills and experience for some may indeed be due to past discrimination, but the reason they cannot get jobs is because the market places a very low value on what they have to offer, not because they are necessarily discriminated against in the selection process.

People with these characteristics were once referred to as *hard-core unemployed*, a term with rather negative connotations. This term has subsequently been changed simply to disadvantaged. Disadvantaged people are those who, perhaps through no fault of their own, have never learned any skills that are marketable, may have poor health, undoubtedly have a poor education, or may never have learned appropriate work habits. Thus they simply are not qualified for most employment opportunities.

As the workplace continues to change, this problem will become more severe. Jobs are expected to continue to decline in manufacturing, mining, and other industries where unskilled men traditionally found entry-level employment as laborers. Most of the job growth in the future will be in fields like information processing and services and will require not only the ability to read and write but considerably more skills and training. According to a Hudson Institute study, by the year 2000 people with less than a high school education will be able to fill only 14 percent of all jobs, compared to 18 percent currently.[41] In an economy that will require an increasingly sophisticated work force, the productive role of the unskilled and illiterate may become nearly irrelevant.

What is needed to bring the disadvantaged into the marketplace is some effort to help them obtain the skills and experience necessary to get and hold employment. The emphasis of public policy must be placed on programs to equip them with the skills, abilities, and habits that are fundamentally necessary to compete for a job in the marketplace. As the nature of jobs changes, these programs must also change to provide skills and training that are relevant for the new kinds of work that are developing. There are both public and private sector programs directed toward this purpose.

Public Sector Programs. There are different kinds of public sector programs designed to increase the productivity of people, including training programs that attempt to equip people with skills so they can enter the market with something to offer employers and public works programs that provide people with actual work experience and enable them to earn an income. An example of a public policy program that was both a training and a public works program is the Comprehensive Employment and Training Act (CETA). This act became law in 1973, replacing the federally controlled Manpower Development Training Act with a program that allowed distribution of federal funds by local officials. This shift of control to prime sponsors at the county and municipal levels was based on the theory that local officials knew more about local conditions than federal bureaucrats.

CETA was originally passed to provide new skills for the nation's disadvantaged people. This population was referred to as the "structurally" unemployed—those people who are left out of the competitive labor market for reasons of race, poor education, lack of opportunity, or other social and economic reasons. But in the late 1970s an increasing share went to hire the unemployed in public service jobs. These jobs were only temporary. Their purpose was to tide some people over rough spots in the economy, while people without skills were able to get some experience that would help them to get permanent jobs after their CETA stint. The public service employment part of CETA grew from $440 million in 1974 to about $6 billion in 1979, leaving approximately $4 billion for various job-training programs[42]

The CETA program, however, had serious problems. The program made no noticeable dent in the number of disadvantaged people unemployed, and billions of dollars were wasted on ill-defined and hastily executed relief programs. In addition, the slackness of its management was an invitation to widespread abuse and fraud. Thus CETA's image was one of an abuse-ridden, make-work employment agency rather than a training agency to equip people for meaningful jobs. Many members of Congress and the Reagan administration came to believe it was time to scrap the program entirely.

In 1981, the federal jobs portion of CETA was dismantled and about 306,000 public service jobs subsidized through CETA vanished. Former CETA participants and cities that used them had to adjust to a world without the jobs program. The federal government tried to find other jobs for former CETA workers without much success. Most of the 38 percent who did find other work stayed on public payrolls, only to be faced with layoffs when states and cities had to eliminate jobs during the recession.[43]

The Reagan administration tried to return CETA to its original role of improving the employability of the structurally unemployed. The successor to CETA was a $1.8 billion job training program called the Job Training Partnership Act (JTPA). Under this program, private industry councils were to be created in cities of 200,000 or more and in communities designated by the government. These councils would be similar to CETA sponsors, but most of the membership and its chairman would have to be business leaders. The council, along with local governments, decides what kind of jobs were locally available and then creates a training program to match the available jobs. The JPTA was designed to ensure that public funds would be spent effectively. Seventy percent of all funds must be used for training programs that lead to private sector employment.[44]

The goal of the program is to prepare groups of adults and youth for employment through training or placement. Preparation for a job is undertaken by local government officials working with the private sector. Four categories of the unemployed are targeted by the program. These include disadvantaged adults, disadvantaged youth in search of summer jobs, dislocated workers, and a miscellaneous category consisting of Native Americans, migrant and seasonal farm workers, and veterans.[45]

Federal funding of the JPTA is about $3.5 billion annually, with most of the money distributed to more than 600 local programs or service delivery areas around the country. These programs include a training program for the poor, a summer jobs-for-youth program, and a special program for workers who have lost their jobs because an industry is depressed or in decline. Officials say that about 800,000 people a year received training under this program, and about 60 percent of them get placed. This placement rate is much higher than CETA achieved.[46]

But critics say that the program emphasizes low-cost, short-term results at the expense of long-term solutions. Only about one in every 20 workers who qualify for the program can be helped. Thus the program is said to focus on those who could probably find jobs on their own and turns its back on those who need help the most.[47] Others say that the program is a boondoggle for the private sector, with the money spent on questionable activities. At least the program is not as bad as CETA, they say, because it wastes less money.[48]

Private Sector Programs. The National Alliance of Business (NAB) was founded in 1968 in response to President Johnson's labor message to Congress. In this message he announced a joint business-government effort to expand employment and training of what were then called the hard-core unemployed. The NAB, under the initial leadership of Henry Ford II, formed the Job Opportunities in the Business Sector (JOBS) program to carry out this objective. The rationale for the program was to bring the disadvantaged into the mainstream of the economy. There was a claim that the program also had a payoff for the free enterprise system by proving that business and private citizens could help solve an urgent social problem that had not been able to be solved by government alone.

In 1977, the White House and Labor Department held discussions with leaders of NAB and other business organizations. There was a concern that the primary thrust of government employment programs at that time involved fully subsidized public jobs with a very small fraction of government money supporting job training and hiring in the private sector. The decision was made to try and bring the government's work force employment apparatus into closer collaboration with the private sector, including the universe of small businesses that were largely overlooked by past programs.[49]

Thus was born Title VII, an amendment to the 1973 Comprehensive Employment and Training Act. Enacted in October 1978, Title VII authorized $400 million for what was called a Private Sector Initiative Program (PSIP). This program called for the establishment of business-led organizational units called Private Industry Councils that would share with CETA prime sponsors—the local government units that operate CETA programs—the responsibility and authority for administering Title VII funds.

The NAB was given leadership responsibility for organizing the private sector response and began developing the professional staff expertise to fulfill this new assignment. It began working with the local prime sponsors to assist in the organization of the Private Industry Councils (PICs), 300 of which

were expected to have been organized by October 1979. Late in 1978, the NAB negotiated a $13 million contract with the Labor Department, $2.9 million of which was earmarked for PISP. These funds were to make it possible for the NAB to provide leadership for the program, technical assistance to business and prime sponsors, and serve as an information clearinghouse for processing, analyzing, and disseminating information on the results of local programs.

These PICs became the focal point of the government's alternative to CETA in 1982, and billions of dollars from programs funded under CETA were diverted to about 460 PICs to see if business input into training programs would improve the ability of disadvantaged workers to find jobs of a permanent nature.[50] With the passage of the Job Training Partnership Act, the NAB channeled its resources to supporting and strengthening the PIC network, and to developing mechanisms for expanding corporate involvement in this new form of public/private partnership. The NAB offers expertise, services, and products to businesses, private industry councils, and state and local governments to help them resolve local employment problems.[51]

In addition to these efforts to hire and train the disadvantaged, the NAB since its inception has also developed programs for unemployed youth. The youth programs seek to provide students with the motivation, guidance, and on-the-job work experience that will enable them to pursue productive careers. The Alliance aids in the development of partnerships among business, education, job training, and community-based organizations to create "compacts" to reduce dropout rates among youth, improve educational achievement among high school graduates, and boost youth employment. These compacts attempt to link educational improvement with increased job opportunities for youth who attain certain educational goals.[52]

Besides this kind of a comprehensive program supported by the private sector, many business organizations themselves are instituting training programs for the disadvantaged. The labor market is changing as the baby-boom generation passes into middle age, and by the year 2000, 20-year-old entrants to the work force will fall by a total of 2 million, or 8 percent, from 1985. About 80 percent of these entrants will be women, minorities, or immigrants, groups that in general are the least educated. Literacy is a particular problem, as many 21- to 25-year-olds cannot locate specific information in a news article or decipher a bus schedule. Thus business organizations are developing training programs to equip these people with basic skills that they will need to be successful in the workplace.[53]

Minority Business Enterprise

Another approach to creating equality of economic opportunity is through the development of minority businesses. This approach involves giving minorities in this country special assistance in establishing businesses, obtaining capital, finding markets for their products, and building a managerial class. From this effort, the minority community should obtain a substantial measure of social and economic benefit. The goal of this approach is not to eliminate discrimi-

nation from the employment opportunities in the institutions of society run by the white majority but to promote the development of more economic institutions owned and operated by minorities themselves. Disadvantaged areas of cities are much like developing nations and need similar assistance to begin the process of social and economic development. If this effort could be successful and minority businesses established on a wide enough scale throughout minority communities, equality of opportunity might become more a reality and the effects of past discrimination overcome through the economic and social growth they would generate.

The need for this approach was recognized in the late 1960s, when statistics showed that there were few minority manufacturing firms in the country. The major reasons for this lack were the substantial amounts of capital needed to start such businesses and the lack of markets where the products produced by minority firms could be sold. In 1969, for example, minorities accounted for 17 percent of the total U.S. population, but they owned only 4.3 percent of the businesses, and these firms accounted for only 0.1 percent of business receipts. Well over 80 percent of these minority firms were in the services or retailing industries and thus were very small in comparison with most companies. Discrimination was, of course, a factor in these dismal figures. Minorities found it difficult to obtain financing from banks and other institutions, people were reluctant to buy products from minority firms because of concerns about quality and service, and aspiring minority businesspeople often found it difficult to get an education that would prepare them for an entrepreneurial position.

A new business needs capital, a market for its products, and managerial talent. The government became a supplier of capital for this effort at promoting minority business enterprises. Executive Order 11625, issued in October 1971, formed the Office of Minority Business Enterprise (OMBE), whose purpose was to initiate programs in both the public and private sectors geared toward increasing minority-owned and -financed businesses. In the 1970s OMBE spent $318 million funding over 200 "business assistance organizations" to counsel minority businesspeople, help them obtain financial assistance, and provide them with a variety of technical services.[54]

The Small Business Administration (SBA) also began a program called MESBIC (Minority Enterprise Small Business Investment Corporation), which provided direct and guaranteed loans to minority entrepreneurs. The MESBIC program was an attempt to apply the Small Business Investment Corporation concept to minority-owned businesses. The program invites private investors to establish a corporation that offers equity financing to entrepreneurs. These private investments are then matched by federal funds, but the programs are administered locally. In 1986, MESBICs invested in 1,658 companies, a dramatic increase over the 431 at the beginning of the decade.[55]

In 1969, the Minority Business Development Agency (MBDA) was established as a bureau in the U.S. Department of Commerce. The agency awards grants and establishes cooperative agreements with state and local government agencies, profit and nonprofit development organizations, and trade associa-

tions to offer management, marketing, financial, and technical assistance to minority enterprises. MBDA programs assist minority-owned businesses with acquisitions, mergers, capital development, technical commercialization, management development, and international trade.[56]

The larger business community itself has been active in providing a market for minority businesses. Many corporations voluntarily have instituted what is called a minority purchasing program to increase their purchases from minority enterprises. An organization originally called the National Minority Purchasing Council (NMPC) was formed by business to coordinate and promote these efforts throughout the business community. About half of the Fortune 500 companies established minority purchasing programs to contribute to this effort.[57]

The government has also provided markets for minority businesses. Winners of federal contracts of more than $500,000 have been required to do their best to find minority subcontractors. Efforts to locate them had to be recorded on forms filed with the federal government. Changes in this procedure (Public Law 95–507) now require contractors to work out a plan for subcontracting to minority businesses before the contract is awarded rather than simply show they did their best to find them. These new regulations require contractors to spell out goals for the amount of business they expect to place with minority-owned small businesses. This procedure is very similar to the affirmative action requirement for federal contractors with respect to equal employment opportunities.[58]

Under the SBA's 8(a) set-aside program, government agencies such as the Department of Defense or Transportation can pluck contracts from their competitive procurement channels and allocate them to the SBA, which then becomes the prime contractor and gives the work to minority firms on its roster. In fiscal 1978, 3,406 contracts were awarded under this program, totaling $767 million. This was an increase from eight contracts totaling $10.5 million awarded in 1968.[59] However, in the early 1980s, the Reagan administration told African-American businesses to shoulder more responsibility for their own future and tightened controls on the procurement program. Consequently, the percentage of federal contracts awarded to minority firms began to drop substantially.[60] But in 1986, the value of federal contracts awarded to minority-owned firms rose to $8.65 billion, which was a significant increase over the 1980 figure of $3.1 billion.[61]

Critics of the set-aside program argued that set-asides added to federal procurement costs through reduced competition and rewarded firms that have not necessarily suffered from discrimination. Furthermore, they encouraged the creation of dummy companies that are owned by minorities and women in name only. Thus the set-aside programs were said to be ineffective and rife with corruption, as the case at the end of the chapter illustrates. They also noted that minority firms have difficulty weaning themselves from the set-aside programs and competing for government contracts in the traditional manner. A study conducted by the Senate Committee on Small Business found that nearly 30 percent of minority firms had gone out of business when

they were taken off the program, and another 22 percent said they were facing financial troubles. These figures suggested that fewer than half the firms weathered the transition to a competitive environment. Despite these criticisms, however, there seems to be little political pressure to kill the program and little heart to examine its operation too closely.[62]

Efforts were made to deal with some of these problems when a new law was passed in 1988 that tightened several provisions of the program; The law required companies in the program to compete among themselves for federal contracts in manufacturing worth at least $5 million and nonmanufacturing contracts worth at least $3 million. The SBA could also decide to open other contracts to competition. In addition, firms who have been in the program for 5 years will have to get 25 percent of their revenues from nonprogram sources. This share will rise to 75 percent by the ninth year. Another aspect of the law stated that each government agency must aim to spend 5 percent of its contracting dollars with disadvantaged companies. This provision extended a program adopted by the Pentagon in 1987 to award 5 percent of all contracts worth as much as $7 billion a year to minority-owned small businesses.[63]

Another form of set-asides appeared when Congress set a precedent in 1977 by writing into a $4 billion Commerce Department public works appropriation bill a clause that 10 percent of this total be reserved for minority contractors and subcontractors. This action did not make the construction industry very happy, and 27 suits were filed charging that this 10 percent set-aside was unconstitutional. The issue was one of reverse discrimination, that such a quota for minority business constitutes discrimination against nonminority enterprise. The Supreme Court agreed to hear one of these cases and thus deal with this aspect of preferential treatment. In its decision, the court said that Congress, under the Constitution, had special power to make up for the effects of past discrimination and can legitimately require innocent whites to "share the burden" as long as that burden is not unreasonable. This decision, however, did not address the rights of local governments.

In the wake of this decision, cities and counties began to set aside construction contracts for African American-owned businesses. Dade County in Florida, for example, established a program after the Liberty City race riots in 1980 that awarded a portion of county projects to African American-owned businesses until they reached a level comparable to the African American portion of the local population. Similar programs were set up in New York City, Hartford, Connecticut, and Richmond, California. In 1984, however, the Justice Department attacked the Dade County program, claiming that local governments lack the authority to reserve contracts for any racial group as that action would put other groups at a disadvantage. Only the federal government may do this, the department stated, when duly authorized by Congress and when that power is used only to benefit the actual victims of discrimination. Preferential treatment by local governments can be constitutional if limited to granting enough contracts to proven victims of discrimination to provide them with what they would have attained in the absence of discrimination.[64]

The Supreme Court dealt this form of set-aside a severe blow in early 1989, when it ruled in a case involving the city of Richmond, Virginia, which had awarded a substantial percentage of its contracts to minority-owned businesses. The decision sharply limited the ways state and local governments can favor minority companies by requiring local officials to document instances of past discrimination and determine whether some more neutral program not based on sex or race would be more effective in remedying the problem of bias. This ruling affected about 236 state and local jurisdictions, some of whom halted all or part of their set-aside programs, while others had suits pending against such programs.[65]

In 1988, the top 100 African American-owned businesses had gross revenues of $6.75 billion, which was an increase of 10.2 percent from the previous year. While traditional African American enterprises—for example, construction and food and beverage retailing companies—dominated the top 100 firms, there was some indication that more minority entrepreneurs are moving into fields such as electronics, health care, advertising, real-estate development, insurance, and computer software. Stronger educational credentials, greater access to financing, government assistance, and a growing support network among minority-owned businesses have helped to bring about this change.[66]

But the effort to promote economic opportunity in this manner is difficult. Exhibit 1 shows that even the top ten African American-owned firms are small in comparison to other corporations in the United States. Large pools of equity funds must be made available under realistic conditions, but many banks are reluctant to loan money to African Americans because they do not have a track record of success. There are not enough minority clients to make some minority businesses profitable, and white people are reluctant to patronize minority businesses. Large numbers of white-run organizations will have to do business with minority companies if those companies are ever to develop a market for their products. The business and technical skills of minorities must be developed if they are to compete successfully in the marketplace and move out from under the shelter of government and business.

Building Plants in Disadvantaged Areas

Another strategy to promote equality of economic opportunity is for corporations to build plants in economically depressed inner-city areas. The idea behind these plants is the same as the idea behind minority business enterprises, that they will provide an impetus for economic development of the immediate community. Priority for employment should be given to community residents so that jobs will be available to them. The plants should also provide a mixture of job levels to create opportunities for advancement, even into management levels. The availability of entry-level positions and training programs is an important ingredient for the success of these efforts. These facilities are built to provide jobs for inexperienced people and give them the opportunity to begin careers in the mainstream of industry.[67]

EXHIBIT 1

The Top 10 African American Industrial/Service Companies

Rank	Company	Location	Chief Executive	Year Started	Staff	Type of Business	1987 Sales*
1	TLC Beatrice International Holdings, Inc.†	New York, New York	Reginald F. Lewis	1983	20,365	Processing & distribution of food products	1,800,000
2	Johnson Publishing Company, Inc.	Chicago, Illinois	John H. Johnson	1942	1,903	Publishing, broadcasting, cosmetics & hair-care products	201,563
3	Philadelphia Coca-Cola Bottling Co., Inc.	Philadelphia, Pennsylvania	J. Bruce Llewellyn	1985	875	Soft-drink bottling	166,000
4	H.J. Russell & Company	Atlanta, Georgia	Herman J. Russell	1958	610	Construction & communications	141,902
5	Motown Industries	Los Angeles, California	Berry Gordy	1958	257	Entertainment	100,000
6	Soft Sheen Products, Inc.	Chicago, Illinois	Edward G. Gardner	1964	756	Hair-care products manufacturer	81,260
7	Trans Jones, Inc./Jones Transfer Company	Monroe, Michigan	Gary L. White	1986	1,200	Transportation services	79,300
8	Systems Management American Corp.	Norfolk, Virginia	Herman E. Valentine	1970	635	Computer systems integration	62,675
9	The Maxima Corporation	Rockville, Maryland	Joshua I. Smith	1978	1,300	Systems engineering & Integration	56,086
10	M&M Products Company, Inc.	Atlanta, Georgia	Cornell McBride	1973	165	Hair-care products manufacturer & distributor	47,250

* In millions of dollars, to nearest thousand.

† Formerly TLC Group, Inc.

Source: "The Top 100 Industrial/Service Companies," *Black Enterprise*, June 1988, p. 121. © June 1988 by The Earl G. Graves Publishing Co., Inc., 130 Fifth Ave., New York, NY 10011. All rights reserved.

Control Data Corporation adopted this strategy and built at least four such innercity plants (see box) while it was still headed by William Norris, who advocated this kind of social responsibility. In 1978 Control Data helped form City Venture Corporation, a Minneapolis-based consortium company committed to the revitalization of economically distressed inner cities through business development and job creation. Control Data was to manage the concern initially as its major shareholder, but other major corporations, such as Dayton-Hudson Corporation and Northwest Ban corporation, also bought equity positions. The company eventually had 14 stockholders, including 10 companies, two church groups, and two community organizations. Initially capitalized at $3 million, the corporation's major effort was to bring jobs to the inner city by constructing and operating plants in poverty areas as well as other programs designed to stimulate business development. The ultimate goal of all City Venture programs is community economic self-sufficiency.

Inner-City Operations Northside Plant

Northside was Control Data's first inner-city plant. It was opened in January, 1968, in leased space on the near north side of Minneapolis. In February 1969, the operations were moved into a new 90,000 square foot plant at 277 Twelfth Avenue North.

Northside is Control Data's sole manufacturing source for CY 18/255X computers. Employees at the plant also perform subassembly tasks and operate an extensive sheet metal fabrication shop.

The Northside plant employs 260 full-time workers, with an annual payroll of $6 million. Sixty percent of the employees represent minority races, compared with the 30% minority make-up of the Northside community.

Jobs range from entry-level to management, including electrical/mechanical assembly, electrical technical, sheet metal working, administrative, line supervision and management. The wage and salary rates paid at Northside are identical to those paid to all other Twin Cities Control Data employees in similar job classifications.

Northside's efficiency and productivity are comparable to those of other Control Data plants engaged in similar production.

Northside is the first Control Data manufacturing plant to go more than three years and 1.5 million hours without a lost-time accident. The Northside employees received the President's Safety Award in 1983 and 1984 for this achievement. (*Source:* Control Data Corporation, *Fact Sheet*, May 1984.)

The Reagan administration proposed to extend this concept by creating "enterprise zones" in economically troubled areas of the country. The basic idea of this plan is to offer a series of open-ended tax breaks for employers who decided to locate plants in these enterprise zones. Such breaks could include special investment tax credits on top of the investment tax credit already available, tax credits for hiring disadvantaged workers, tax credits of 10 percent for employers and 5 percent for employees on wages earned in a zone, and elimination of capital gains taxes on the sale of qualified property. The administration hoped these incentives would lead to the creation of

many more new jobs for these zones.[68] The Reagan administration had hoped that as many as 25 of these zones could be approved each year over a 3-year period, but the plan became bogged down in Congress mainly over a debate as to how much these zones were going to cost the government.[69]

While the national bill was blocked, states began creating similar zones of their own. Studies showed that as of 1987, close to 1,500 enterprise zones were operating in 37 states. These zones were said to have created $10 billion in new investment and generated or saved 200,000 jobs.[70] The state of Louisiana alone planned to create 411 zones, in which one-eighth of its people lived. The state contacted nearly 1,000 localities with high unemployment, enlisting those that were willing to cooperate in the program by giving up some local taxes. Florida picked 26 cities and 4 counties in which to establish zones. Connecticut's program focused on Hartford, New Haven, and four other cities with severely depressed neighborhoods.[71]

After several years' experience, however, it appears that the building of inner-city plants is not the answer to poverty in the disadvantaged areas of cities and states. Out of 15 inner-city factories built by major corporations in the mid-1960s, 9 have been either sold or closed. Enterprise zones appear to be an ineffective lure, and tax breaks do not necessarily make a company interested in moving into a depressed area of a city or state. Government must get involved in training disadvantaged workers for the kinds of skills needed by private industry and must ask employers to reserve some of these jobs for minorities. Based upon these recommendations, the Secretary of Labor proposed a 20 percent increase in the department's job training budget for fiscal 1988, predicting that labor shortages would start to occur in the 1990s and that one largely untapped pool of workers will be inner-city minorities who need job training.[72]

Welfare: Providing Income, Goods, and Services

What started out as an effort to relieve the distresses of the depression era grew into a full-fledged welfare system designed to relieve the deprivation of those who, for one reason or another, have not been able to provide for their own needs in a market economy. All modern industrial societies have some kind of a welfare system designed to provide income support and/or actual economic goods and services to those in need. These programs are costly, but are believed to be a necessary overhead expense to deal with the harsh outcomes of a market economy where some fall farther and farther behind in the race for the rewards of society and simply are not able to provide for themselves.

Public Policy Benefits

The types of benefits provided differ widely, but they can be categorized as in Exhibit 2 according to the type of benefits provided. There are social insurance programs where beneficiaries have actually contributed something to the program throughout their lifetimes. There are also programs that are

designed to provide people with cash income assistance. Finally, other programs provide actual goods and services to people that are usually referred to as in-kind assistance.

The Social Security program was established in 1935 as a national insurance scheme to supplement the retirement funds citizens had available. Since this program was set up on a pay-as-you-go basis, it is a simple transfer of money, year by year, from the working to the retired population. Thus it is not an actuarially sound insurance program, despite the fact that the program was conceived as social insurance rather than a government giveaway program. Defining it as a social insurance program helped to legitimize the program and assure its passage. The program provides at least half the household income for 62 percent of its beneficiaries. It accounts for more than 25 percent of all federal tax revenues and expenditures and provides benefits for one out of every seven Americans.[73]

Social Security also provides benefits for the survivors of workers who die before retirement and offers disability protection. Medicare covers many of the medical needs of the aged and disabled who receive Social Security and is linked with Social Security for financing purposes. Thus it is usually classified as a social insurance program even though it provides in-kind benefits. Unemployment compensation is designed to tide people over while they are between jobs when the termination of their previous employment was involuntary. Unemployment compensation is managed by the states with a federal subsidy.

EXHIBIT 2

Income/Support Programs

I Social insurance programs
- A. Social Security, Old Age, and Survivors Insurance
- B. Public employee and railroad retirement
- C. Unemployment insurance
- D. Medicare

II. Cash income assistance
- A. Public assistance to the aged, blind, and disabled
- B. Veterans' compensation and pensions
- C. Aid to Families with Dependent Children

III. In-kind assistance
- A. Medicaid
- B. Food stamp program
- C. Student aid
- D. Housing subsidies and public housing
- E. Nutritional programs for children

With regard to cash income assistance programs, there are programs that provide public assistance to aged, blind, and disabled people; the AFDC, which provides broad-scale public assistance; and veterans' compensation

and pensions. The various benefit areas that provide in-kind assistance include Medicaid, which provides medical benefits to the poor who are aged, permanently disabled, or are in single-parent families. The food stamp program started out small in 1962 but escalated in the mid-1970s to become the second largest in-kind transfer program. It provides benefits in the form of food vouchers to all poor persons on a scale that varies by income. Also included in this category are various kinds of student aid programs to provide scholarships for higher education, housing subsidies or low-rent public housing, and free school lunches for elementary and secondary school children.

Growth of Benefits

The growth of these benefits can be looked at in two ways: (1) the growth of specific programs and (2) the growth of transfer payments overall. Table 1 shows the growth of social welfare expenditures by the federal government from 1960 to 1986 by program areas. The graph in Figure 4 on page 303 shows the growth in selected programs for the years 1970 and 1980. The big gainer was the food stamp program, increasing by 490 percent in a 10-year period. Most of the other programs also had a substantial increase, showing that welfare programs in general experienced a good deal of growth during this decade.

As far as the overall growth of transfer payments is concerned, Table 2 on page 305 shows social welfare expenditures as a percentage of GNP and total government outlays from 1960 to 1986. According to Michael E. Levy of the Conference Board, fiscal year 1965 marks a clear dividing line between the moderate growth of these transfers during the first half of the decade and the much higher growth rates that began with fiscal 1966 and finally slowed in fiscal 1978 to a lower level. Payments to individuals grew at an average annual rate of 15.3 percent during fiscal years 1966 to 1979, compared with 6.6 percent during fiscal years 1961 to 1965. Fiscal 1965 saw the beginning of a new "social activism" period, when many new welfare programs were enacted (See Figure 5 on page 306). Those programs included the Economic Opportunity Act, the Permanent Food Stamp Act, and the Social Security Amendment of 1965, which created Medicare and Medicaid.[74]

New Directions

The Reagan administration, which took office in January 1981, saw its election as a mandate to reverse this trend by enacting deep budget cuts in some of the entitlement programs. These budget cuts coupled with a 10 percent tax cut over each year of a 3-year period, were supposed to bring government spending under control, bring inflation down, stimulate increased saving and investment, and promote economic growth. These changes, formalized in the Economic Recovery Tax Act of 1981, altered the nature of the trade-offs as the cut in entitlement programs disproportionately affected the lower-income groups because they received most of the benefits from these programs, and the tax cuts disproportionately benefited the upper- and middle-income groups because they received the most income.

TABLE 1

Social Welfare Expenditures by the Federal Government: 1960–1986

	Social Welfare Outlays									
Year	Total	Annual percent change	Social insurance	Public aid	Health & medical programs[1]	Veterans programs	Education	Housing	Other social welfare	All health and medical care[2]
1960	24,957	[3]11.3	14,307	2,117	1,737	5,367	868	144	417	2,918
1970	77,337	12.0	45,246	9,649	4,775	8,952	5,876	582	2,259	16,600
1975	167,426	16.7	99,715	27,186	8,521	16,570	8,629	2,541	4,264	34,100
1980	302,631	12.6	191,162	48,666	12,703	21,254	13,452	6,608	8,786	68,801
1981	344,120	13.7	224,574	55,946	13,650	23,229	13,372	6,045	7,304	80,560
1982	367,620	6.8	250,551	52,485	14,528	24,463	11,917	7,176	6,500	90,706
1983	401,413	9.2	274,315	56,709	15,440	25,561	12,399	9,961	7,028	95,719
1984	420,399	4.7	288,743	58,480	16,622	25,970	13,010	10,226	7,349	103,927
1985	452, 860	7.7	313,108	61,985	18,630	26,704	13,796	11,088	7,548	118,955
1986	472,364	4.3	326,588	65,615	19,926	27,072	15,022	10,164	7,977	125,730

1. Excludes program parts of social insurance, public aid, veterans, and other social welfare.
2. Combines "Health and medical programs" with medical services included in social insurance, public aid, veterans, vocational rehabilitation, and antipoverty programs.
3. Change from 1955.

Source: U.S. Department of Commerce, *Statistical Abstract of the United States 1989*, 109th ed. (Washington, D.C.: U.S. Government Printing Office, 1989), p. 346.

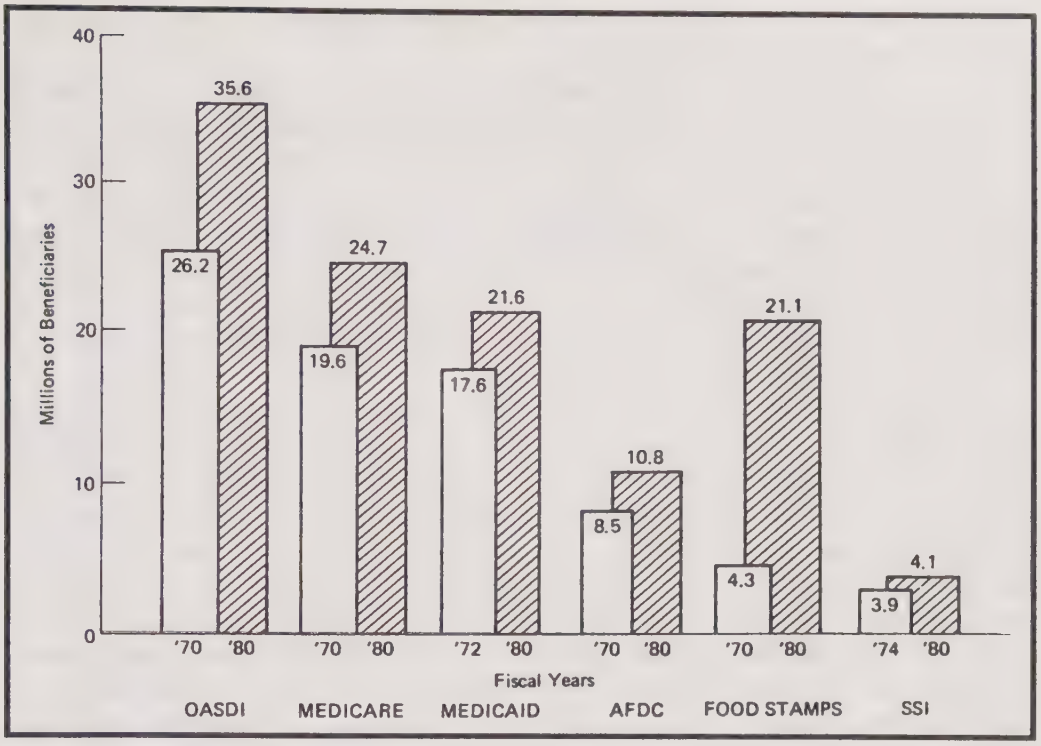


Figure 4
A Decade of Growth in Entitlement Programs
Source: L. Douglas Lee, "The Deficit Dilemma—and Its Solution," *The Journal/The Institute for Socioeconomic Studies,* Vol. VIII, No. 1 (Spring 1983), p. 16. Data from *Social Security Bulletin, Annual Statistical Supplement,* U.S. Department of Health and Human Services.

Regarding budget cuts in entitlement programs, food stamp funding was trimmed by 2 percent to $11.1 billion a year and the program was restricted to the "truly needy," defined as those whose incomes fell below 136 percent of the poverty level. Under this rule, a family of four must earn less than $13,260 to qualify for food stamps.[75] The AFDC program was cut 2 percent to $7 billion, which along with new eligibility rules, was expected to reduce or eliminate benefits for 670,000 of 4 million AFDC recipients.[76] Unemployed adults who received AFDC support would be required to work about 20 hours each week performing community service work. Certain exemptions from this rule were allowed.[77] By reducing the number of students eligible for free and reduced price lunches, Congress carved about $1.5 billion from the school lunch program's $4.7 billion budget. Funding for the Legal Services Corporation established to provide legal assistance to low-income people was cut 25 percent in 1982 to $241 million from $321 million the previous year.[78]

As a result of these budget cuts and changes in eligibility rules, a Congressional Budget Office study said that 325,000 families lost eligibility for Aid to Families with Dependent Children and an additional 325,000 to 350,000 had their benefits reduced. About 1 million people lost eligibility for food stamps,

and the number of pupils fed in the federally subsidized school lunch program dropped by about 3 million.[79]

The stated intent of these changes was not to cut aid to the truly needy but to force people off the welfare roles who were able to work for a living and reduce the level of government spending for entitlement programs. The administration maintained that it was not actually cutting entitlement programs in most instances, but only slowing their growth. They argued that the so-called safety net remained for those who are truly needy in our society and in need of government assistance. The Reagan administration was concerned to provide at least a subsistence income for the deserving poor, those who are clearly incapable of self-support.

But beyond this support for the truly needy, it became clear that the administration was attempting to redefine poverty as largely a moral rather than a social problem. Many of the poor were seen as morally deficient who lacked the discipline and incentive to support themselves. Poverty was not the result of unemployment in a changing economy or other barriers to work and self-sufficiency, but was rather the result of individual behavior and the lack of personal responsibility. Many of the poor had thus become dependent on the welfare system that had become too large and penalized the productive members of society while rewarding the unmotivated and making them welfare dependent. Thus they needed to be taken off the welfare roles and, when faced with deprivation, would find jobs or some other means of support. Welfare and not poverty was thus the problem, as the current welfare system caused poverty or at least provided disincentives for people to climb out of poverty.

> Conservatives argue that government interventions are harmful by definition in that they weaken links between individual behavior and income among groups already plagued by an inadequate sense of personal responsibility. . . . Public assistance presumably destroys families and communities, inhibits individual advancement, hinders broader economic growth, and weakens the capacity of state, local, and private agencies to provide for the truly needy. Through such assaults on federal intervention welfare programs were considered to be a threat to the nation's moral fiber and a disruption of the propitious functioning of private markets and local governance.[80]

Critics, particularly the Democrats who opposed this philosophy and the actions taken to cut welfare programs, argued that the Reagan administration was dismantling social programs that had been built up over the past 50 years to help people in distress. The Reagan philosophy was said to be one of "every person for himself or herself and the devil take the hindmost." Cuts in welfare programs were hurting those who were truly needy and meant that they were not getting adequate food and shelter or medical care. Some commentators referred to the decade of the 1980s as the mean decade, where the poor were blamed for their condition and were hit hardest by changes in social and tax policies.[81]

TABLE 2

Social Welfare Expenditures Under Public Programs as Percent of GNP and Total Government Outlays: 1960–1986

	Total Expenditures				Federal				State and Local Government			
			Percent of—				Percent of—				Percent of—	
Year	Total (bil. dol.)	Annual percent change[1]	Total GNP[2]	Total govt. outlays	Total (bil. dol.)	Annual percent change[1]	Total GNP[2]	Total Federal outlays	Total (bil. dol.)	Annual percent change[1]	Total GNP[2]	Total State and local outlays
1960	52.3	9.9	10.3	38.4	25.0	11.3	4.9	28.1	27.3	8.7	5.4	60.1
1970	145.9	10.8	14.7	48.2	77.3	12.0	7.8	40.1	68.5	9.6	6.9	64.0
1975	290.1	14.7	19.0	57.3	167.4	16.7	11.0	52.0	122.7	12.4	8.0	65.3
1980	492.5	11.2	18.5	56.5	302.6	12.6	11.3	54.3	189.9	9.1	7.1	60.8
1985	730.4	8.2	18.5	51.2	452.9	8.4	11.5	47.8	277.5	7.9	7.0	59.0
1986	770.5	5.5	18.4	47.9	472.4	4.3	11.3	47.6	298.2	7.4	7.1	58.2

1. Change from prior year shown; for 1960, change from 1955.
2. Gross national product.

Source: U.S. Department of Commerce, *Statistical Abstract of the United States 1989*, 109th ed. (Washington, D.C.: U.S. Government Printing Office, 1989), p. 348.

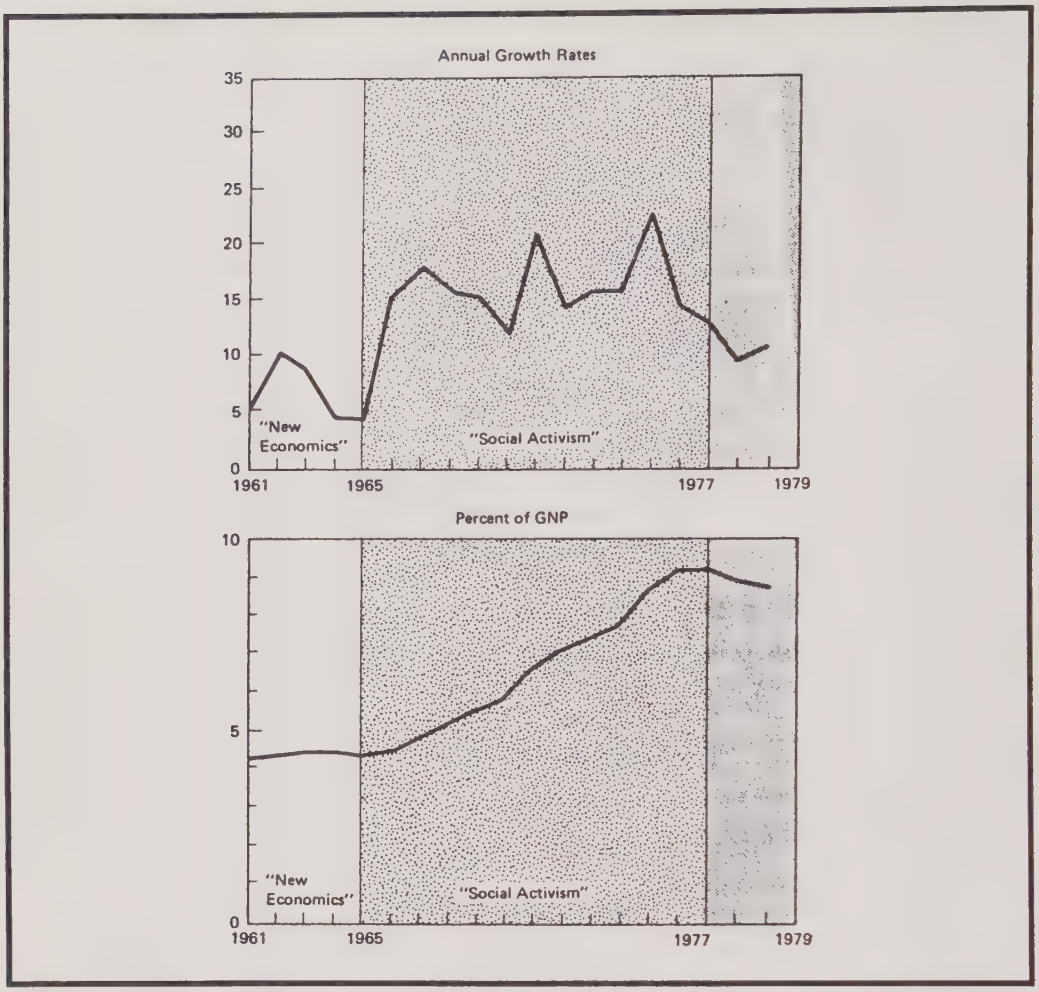


Figure 5
Payments for Individuals, Fiscal 1961–1979

Note: Includes all direct and indirect transfer payments except unemployment compensation, which was excluded here as the major cyclical component.

Source: Michael E. Levy, "Federal Budget Policies of the 1970s: Some Lessons for the 1980s," *Stabilization Policies* (St. Louis, MO: Washington University Center for the Study of American Business, 1980), p. 166. Reprinted with permission.

The final returns in regard to the change in direction represented by the cutbacks in entitlement programs are not yet in, but some figures show trends that have developed over the past decade. Inequality continued to increase throughout most of the decade, as the top fifth of all families received 44 percent of the income in 1988—an increase from 41.5 percent a decade earlier. Meanwhile, the bottom fifth of all families received 4.6 percent of the income, a decrease from 5.2 percent a decade earlier. Some 17.2 percent of all money income received by families in 1988 went to the wealthiest 5 percent of all

families, which was the greatest share for these families since 1950, although changing definitions over the years distort the comparison to some extent.[82]

Statistics released by the House Ways and Means Committee showed that the income of the poorest fifth of income earners fell 8.8 percent between 1979 and 1987, while their income after taxes and transfers fell 9.1 percent. In comparison, the income of the richest 20 percent of the population increased 19.9 percent, while their income after taxes and transfers increased an even larger 18.7 percent. The people in the top 5 percent of the income distribution received a 48 percent increase in income over the same time period and were rewarded with a 12.5 percent drop in their tax rates. Effective tax rates (the ratio of taxes to family income) rose for the 10 percent of families at the bottom income levels and fell for the 10 percent of families at the highest levels. It thus appeared that the rich were getting richer and the tax structure was doing less to reduce inequality than in previous years because of increases in payroll taxes such as social security and the shrinkage of corporate income taxes.[83]

In 1987, a consensus seemed to be emerging regarding reform of the welfare system. Any reform should discourage long-term dependency, promote family stability, and provide work incentives. Furthermore, states should be given more administrative discretion and more latitude to experiment with new approaches to welfare. This new consensus included both liberals and conservatives, who began to develop new strategies that might help make welfare less a government dole and more a way to salvage human lives. These new strategies were based on two major changes to welfare, (1) tying welfare payments to jobs or job training and (2) giving the states primary responsibility for finding ways to move people from welfare dependency to productive employment. Useful work began to be seen as critical to developing self-esteem and a sense of personal responsibility. And it was felt the federal government should give states and localities financial incentives to move people off welfare roles into becoming productive members of society.[84]

This emphasis tried to tie welfare more directly to workfare and link income maintenance to employment preparation. This philosophy changes the nature of the welfare bargain. The receipt of welfare is conditioned on participation in a detailed, supervised program of preparation for self-support. Willingness to participate in such efforts becomes a test of need for public assistance.[85] Based on this philosophy, Congress passed the Family Support Act in 1988 emphasizing work programs to help welfare parents become self-supportive. Welfare parents with children over the age of three are required to enroll in state basic-education, job-training, work-experience, and job-search programs.[86]

Questions for Discussion

1. Describe the nature of poverty. What are the different factors that contribute to a poverty condition? Which of these factors, in your opinion, are most significant? What are the effects of poverty?

2. Is there any discernible trend with respect to the level of poverty in the United States in the past several years? What factors seem to be most closely related to the level of poverty in the country? What are the policy implications of your answer?
3. How has the nature of poverty changed in the United States as far as the groups affected are concerned? Why have these changes occurred? Are there any new changes that may come about in the next few years that you can forsee? What should the nation do to deal with these problems?
4. Examine closely the studies that take in-kind transfers into account. Do you agree with the methodology used to cash out these transfers? Are the conclusions valid? Is there less poverty than the official figures would lead us to believe? If in-kind transfers have such an impact, then why haven't policymakers taken these into account? What would you recommend be done to take the figures more realistic?
5. Describe a disadvantaged person. What handicaps do disadvantaged people take with them into the marketplace? What can public policy do in general to help overcome these handicaps?
6. What is a minority business enterprise? How would the development of more of these enterprises promote equality of economic opportunity? What ingredients are necessary for their success?
7. Should the government help provide markets for these minority enterprises? Is this fair to the white businessperson? Is there an element of reverse discrimination in allocating a certain percentage of public works money to minority enterprises? How would you rule on this issue if you were a federal judge?
8. Describe the origins of the welfare system. Does the market system, indeed, condemn some people to death? Are the rewards and penalties that the market allocates fundamentally arbitrary?
9. Does a democratic government owe its citizens some form of aid if they have not been able to provide for themselves through the market system? Are transfer payments a legitimate area of public policy?
10. Distinguish between cash-income assistance and in-kind assistance. If you were a recipient of assistance, which form would you rather have? Is there any basic difference in these forms of assistance from society's point of view?
11. Study the Social Security system in more detail. What was the rationale for making it a mandatory system for most people in the country? Why was it designated as a pay-as-you-go-system? Should the benefits be indexed to keep up with inflation? How will or do you feel about supporting the aged—seeing some of your paycheck directly transferred to the Social Security system for the benefit of other people?
12. Think of some alternative methods to provide for the needs of the aged in this country. Which are most feasible? Should the mandatory retirement age be removed entirely? How would this affect your job or prospects of finding work?

13. Explain the growth of transfer payments throughout the late 1960s and early 1970s. Does this growth represent a fundamental shift in the thinking and values of the American people? What implications do your answers have for the free-enterprise system?
14. Is there a trade-off between equality and efficiency? What measures are relevant in trying to determine the nature of this trade-off? What guidelines could you suggest for policymakers who are concerned about taking this trade-off into account in their decision making?
15. Do you agree that welfare reform is likely to be only incremental at best? Why? What are the political realities? What are current trends regarding welfare at present and what does the future hold with respect to the growth of social expenditures on the part of the federal government?
16. Why are the results of all these efforts to promote equality of economic opportunity rather dismal? Is there no good solution to this problem, either through the market or public policy? What are the implications of your answer for the future of the welfare system in this country?

Case: Wedtech Corporation

In 1965, John Mariotta, a high school dropout, invested $3,000 to start a small manufacturing company in a desolate area of the South Bronx. The company struggled along for 5 years, when Mariotta entered into a partnership with Fred Neuberger, a mechanical engineer. The firm, named Welbilt Electronics, was eligible for loans directed to minority contractors from the Small Business Administration. The SBA had a set-aside program that allowed minority firms to obtain federal contracts without competitive bidding. By the early 1980s, Welbilt began winning million-dollar contracts for navy pontoon bridges and army smoke-grenade launchers. Eventually, about 95 percent of its business came from these set-aside contracts.[1]

The company changed its name to Wedtech in 1983 and moved to new facilities in the shadow of Yankee Stadium. The company hired more than 1,000 African American and Hispanic workers from the local neighborhood, an area that had lost 40 percent of its manufacturing base during the decade previous. The company's profits increased from $8 million in 1981 to more than $72 million by 1984 and went public with a $30 million stock offering that made millionaires of Mariotta, Neuberger, and other executives. The company became a symbol of minority achievement, as President Reagan lauded the company's success and called John Mariotta a hero for the 1980s. The company was hailed as a success story and an example of what minorities could achieve.[2]

But then federal and local prosecutors entered the picture, and a different story began to unfold. The prosecutors alleged that Wedtech prospered as a result of promiscuous bribery of city, state, and federal officials and engaged in a conspiracy to win government contracts by fraudulently depicting itself as a minority-owned business. The company was depicted as a racketeering enterprise dependent on bribes to public officials to win minority

contracts. Payoffs were so routine, the prosecutors alleged, that the company maintained a secret bank account for depositing kickbacks from contractors and greasing public officials.[3]

When Wedtech wanted a multimillion-dollar contract for engines, for example, it hired Attorney E. Robert Wallach as a consultant; he was allegedly given some $500,000 worth of the company's stock over several years in addition to a retainer for his services. Wallach was an old friend and lawyer of then-Presidential counselor Edwin Meese, who was kept informed of Wedtech's efforts to win the engine contract. Meese later became Attorney General for the Reagan administration. The company also retained Lyn Nofziger, who had formerly worked for the White House and left to set up his own consulting firm. Nofziger had written a letter on behalf of the company to Meese's chief deputy, who then set up a White House briefing on Wedtech that was attended by top officials and representatives of the army and the SBA. Soon after this meeting, Wedtech was awarded the first of its many military contracts.[4]

When the stock sale took place, Mariotta was no longer the majority shareholder, which meant Wedtech no longer qualified as a minority-owned company. The local SBA office thus began proceedings to remove the company from the set-aside program. The company then quickly transferred 1.8 million shares of company stock to Mariotta's nominal control and retained the law firm of Richard Biaggi, the son and former partner of South Bronx Congressman Mario Biaggi. The law firm received more than $1 million in fees and stock for representing the company. Soon after these actions, the SBA approved Wedtech's stock transfer and allowed it to remain eligible for set-asides.[5] Eventually, Mario Biaggi and his son, along with five others, were indicted by a federal grand jury on charges of extortion, racketeering, and conspiracy. Prosecutors claimed that Biaggi received $3.6 million in Wedtech stock after he threatened to undermine SBA support for the company. A former SBA regional administrator was also indicted.[6]

Soon thereafter, Mariotta was replaced as Wedtech's chairman by Neuberger after they disagreed about management policies. The stock that Mariotta controlled was then returned to the company and it lost its status as a minority contractor. By October 1986, the stock had dropped from $11.44 a share in March to $6.50 a share. By the end of the year, the company had laid off 1,000 people and filed for bankruptcy. Debts were listed at $212 million. Four former executives, including Neuberger, pleaded guilty to a range of charges that included bribery and mail fraud. Marietta himself was not indicted.[7]

The company tried to recover. New management took over and obtained a $500,000 loan from Chemical Bank and $38 million in government contracts that were not under investigation. However, the Cadillacs and limousines used by Wedtech's former officers were gone and a $305,000 condominium purchased in 1985 for entertainment purposes was put on the market. The scandal was a blot on the minority set-aside program and stimulated several proposals for reform. The incident also cast aspersions on the minority work

force that some considered undeserved. In any event, the unfolding story was another example of how difficult it is to implement programs to aid disadvantaged people and avoid corruption and favoritism.[8]

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25

The Working Poor: Locked Out of Careers and the Organizational Mainstream?

Ellen Ernst Kossek, Melissa Huber-Yoder,
Domini Castellino, and Jacqueline Lerner

Employers have an important stake in the welfare-to-work reform efforts sweeping the country, since most involve mandated work and labor market preparation. Executives and managers should also be deeply interested in limiting the future growth of the working poor. In order to better tap workfare programs and its clients as an organizational resource, managers must have increased understanding of the work attitudes and behaviors of welfare recipients involved in such labor market transitional programs as the State of Michigan's pioneering Social Contract initiative. Strategies to enhance the career and employment prospects of the working poor should bear in mind that the obstacles confronting them, while major, are not abnormal. There are growing similarities between the career problems facing increasing numbers of American workers and those traditionally confronting the working poor. Addressing these issues will help not only the working poor but will improve the workplace in general.

Public welfare experiments that involve mandated work-for-your-benefits programs, time limited subsidies, and labor market preparation are mushrooming throughout the U.S. Although more and more individuals with welfare experience will enter the labor force, employers have had very limited involvement or interest in welfare reform, and have not viewed the working poor as an element of organizational life worth substantial investment. The employment experiences of the working poor will not lead to favorable personal or com-

pany outcomes unless existing policies and career systems are modified to include them.

The working poor are people who have been on welfare for less than two years (and may have previously alternated between welfare and work), and also people who are near or below the poverty level but do not receive welfare benefits. As these comments from four welfare mothers seeking work suggest, it is unrealistic to expect them to become workers with stable careers unless managers seek a greater stake in welfare-to-work mandates and in limiting poverty growth:

> ". . . you can't make a living for children by working at McDonald's and trying to care for them and making sure they are being cared for."

> "Minimum wage does not pay as much as welfare. (It) would not meet need or give benefits."

> "Entry level positions make less than (public) support."

> "(There is) no health insurance and Medicaid without assistance. It's hard to get ahead or even break even without it. It's so hard to get a job."

Why Employers Should Act to Help the Working Poor

Table 1 summarizes the economic and organizational rationales for greater employer action.

Economic Benefits

Having a growing labor force worried about job security and adequate earnings is a restraint on the growth of the economy. Because workers' real wages have not risen with the level of corporate profits, US economic growth is hindered by what economists call underconsumption.[1] As economist Joseph Schumpeter argued, even the wealthy end up in a profit crisis when workers lack jobs or good wages and cannot afford to buy products.[2] Employers try to maximize profits by paying lower wages and minimizing employment levels, but this undercuts the employees' abilities to consume the goods and services the firm needs to sell to increase earnings. Employers hope another employer will pay its workers well and offer enhanced employment prospects, but few want to be the employer that actually does this. But only by cooperating can employers realize the benefits of limiting the growth of unemployed or low paid individuals in order to increase the pool of potential consumers.

Helping the working poor can also help a company's public image. Economic benefits accrue to companies that stress socially responsible values. The book *Shopping for a Better World* lists companies from Ben and Jerry's to PAX, with its socially responsible mutual funds, to Working Assets long distance, which donates to consumer designated charities, that have profited from the growth in consumer purchases based on social responsibility.[3] Another economic benefit stems from the disproportionate representation of low-wage workers in positions with high customer contact. Many of a firm's

least paid employees are the front line people who deal with customers and can generate repeat business through good service.

An increasing underclass impedes the ability of employers to grow in a global economy and to achieve strategic goals by hiring future generations of workers. Although the US has the highest GNP among the 15 most industrialized nations, its poverty rate is around 13 percent, nearly double those of Canada and Australia (7 percent), more than double those of France and the United Kingdom (5 percent), and more than three times those of Sweden, Germany and the Netherlands (4 percent or less).[4] More than 14.5 percent of all Americans live in poverty, and the gap between the richest and the poorest Americans has widened to levels unprecedented since the late 1940s. Many of the working poor have children under 18 years old, and the gap between rich and poor children, compared with those of other industrialized nations, has increased over the last 10 years for all racial and ethnic groups, and in both urban and rural areas.[5] This gap clearly has an impact on education, for the US ranks only 12th in mathematics and 7th in science achievement of 13 year olds among the 15 most industrialized countries.[6]

TABLE 1

Why Employers Should Act to Help the Working Poor

Economic Benefits
- Growing pool of potential consumers with discretionary income
- Value-based organizational practices are attractive to consumers.
- Low-wage workers are increasingly the gatekeepers of future revenue (i.e., repeat business from good service)
- A growing underclass impedes employer's growth potential in a global economy

Organizational Benefits
- Enhance adaptation to the new career context for all employees
- Increasing numbers of managers will be supervising the working poor
- Pygmalion effect—viewing low-wage workers negatively can result in dysfunctional employee behaviors

Organizational Benefits

One in ten Americans is part of the temporary workforce, and as layoffs increase, more and more are likely to experience unemployment.[7] This new American workforce has human resource needs that mirror those of the working poor. By adapting organizational systems to increase the success of low wage workers, employers may transform their firms to fit the new career context of shortened ladders and tenuous jobs. Redesigning organizations and developing strategies to make human resource systems more adaptive should enable firms to better tap the potential of their entire workforce. Many employees—not just the lowest-paid—will need career counseling, training and retraining, flexible hours, adequate wages, work/life integration supports, and employment stability.

Viewing low-wage workers as disposable labor can trigger dysfunctional employee behaviors and attitudes. Many firms have unspoken policies that low-wage employees in entry level jobs should have only limited opportunities to significantly increase earning, improve skills, get promoted, or receive medical benefits or child care support. Some employers may argue that paying benefits or giving raises to workers in positions that have constant turnover is not cost-efficient, but neither is having HR policies that are not development-oriented.[8] Constant turnover, even in low skill service jobs, has a negative effect on customers. Successful human resource systems are designed to reinforce employee attitudes and behaviors that support quality customer service.[9]

Because new employees learning a job are likely to be less productive than experienced workers, constant high turnover is detrimental to companies, as are the costs of continually advertising for, recruiting, selecting, and training new workers. Treating employees as disposable labor does not stimulate their productivity. A vicious cycle can evolve: employers don't want to invest in low-wage employees because they have minimal skills and high turnover; employees don't invest in their jobs because employers don't invest in them. Insensitive and impersonal employer policies are directly linked to undesirable employee behaviors.[10]

Pioneering Initiatives

There are companies that have had success with low-wage workers. Many of them reformed their employment practices because they faced growing shortages of capable entry-level service workers.

Child Care Vouchers at Burger King

Understanding the value of attracting and retaining minimum wage workers, a Burger King franchise with 14 restaurants gave working parents $1.50 vouchers toward child care for every hour worked. Convinced that its biggest potential employee base was young mothers seeking child care and flexible hours, Burger King felt that raising wages alone wouldn't solve hiring woes. Higher salaries wouldn't lure young mothers, and would mean cutting staff and creating a more stressful and less satisfying work environment. Subsidizing day care seemed a more valuable recruitment and retention tool.

Under simple program guidelines, employees have to work weekday shifts at any needed location. In return, the company directly pays a licensed day care provider, an attractive feature, since workers don't have to float day care dollars (i.e., pay for care and wait for reimbursement), as they do in traditional dependent care reimbursement programs. A contracted child care referral service interviews each user to determine his/her needs. Jayne Thorme, Burger King human resource coordinator, comments on her experience with this initiative:

> The war for workers, especially the scramble for employees on the near minimum wage level, has changed us all. Before, many of us referred to

> active recruiting as heavy classified advertising, but no more. That was before turnover went up to 300 percent and before applications slowed to a trickle. Instead of having a large pool of potential employees to draw from, most operators have more openings than they do applications. Today's successful operator has to combine an attractive work atmosphere and benefits with an aggressive recruitment program that couples advertising, public relations and human resource efforts to reach the employees we need—and, to keep them on the job. . . . I'd like to tell you about one success story. . . . In one of our restaurants, 10 of the 17 people working the lunch shift are day-care moms. The very first day-care person to start there was a mom struggling on welfare. Today she is in charge of the day shift, free from welfare, self-sufficient and recently bought a (new) car.[11]

Burger King launched an aggressive public relations campaign, highlighting free day care in ads. The franchise put up 70 billboards with photos of actual employees using the program and quotes such as "I'm getting free day care!" Recruiters visited women's centers, high schools, child care centers, and job referral agencies, and worked with counselors serving young mothers. Trade journals like *Restaurants USA* and other publications around the world (even in Japan) hailed the program as one of the most ambitious in the restaurant industry. Out of 113 moms and dads applying for the child care benefit in its first year of operation, 103 applied to Burger King especially because of it. Although it spends up to $10,000 a month in vouchers, Burger King feels that having a stable long-term work force more than offsets the alternative: high hiring and training costs from excessive turnover and constant scrambling to fill positions. Management feels that working parents are often more mature than their other employees, take their jobs very seriously, and serve as mentors.

Social Workers at Marriott

At Marriott, professionals with social work skills provide counseling to employees, most of whom work in some of the lower paying hospitality jobs, such as maids, housekeepers, bell-boys, and kitchen workers. The social workers also help with child care, housing, and transportation, arrange language training, and even address domestic violence problems. Surprisingly, supervisors had to be convinced that formal social workers were appropriate, since many of the supervisors were already providing these services to their subordinates on an informal basis. Some supervisors were so personally involved with employees that they were concerned that a professional social work staff might destroy the strong bonds that had developed.[12]

Literacy Training at Domino's Pizza and New York Telephone

Literacy training is another focused intervention used to successfully attract and hire nontraditional applicants. Domino's Pizza combined literacy training with teaching people how to make pizzas in order to be able to attain requisite staffing levels.[13] When 90 percent of 57,000 applicants flunked an entry level exam measuring basic skills in math, reasoning, and reading, New York

Telephone sought out a new influx of immigrants who lacked high school English literacy, but otherwise were ready to enter the US labor market.[14]

Employing the Homeless at Days Inn

Confronted with a shrinking labor market and extremely high turnover, Days Inn of America took the uncommon step of seeking out and hiring homeless individuals. Collaborating with several Atlanta-area shelters, the company established a project to offer above minimum wage jobs to homeless people. Days Inn found that at least a third of the homeless did not have substance abuse or mental health problems, but were caught up in economic circumstances beyond their control.

Days Inn used an innovative interview process. Candidates were prescreened by professionals familiar with the needs and concerns of special sector employees. Skill demands were kept minimal and pay was adequate to pay basic necessities. Workers were required to live within walking distance of their jobs or on a public transportation line. Rooms at a nearby hotel were offered for $5.00 per day, and local government helped most workers find subsidized housing within six months. Days Inn managers found that the homeless employees weren't looking for handouts or special treatment. "They truly appreciate the chance to work and demonstrate that appreciation by serving as role models for their peers," says Richard Smith, Days Inn senior vice president for human resources. "Traditional hiring practices are dying . . . special sector hiring is crucial to the service and hospitality industry's ability to stay competitive. . . . The bottom line is finding profitable labor sources."[15]

Public Sector Welfare-to-work Programs

Studies show that aid to families with dependent children (AFDC) and other federal programs designed to move poor individuals (often single mothers) from welfare-to-work tend to only modestly improve income levels and do not necessarily lessen welfare dependency.[16] Many of the working poor will remain at or near the poverty level, even if employed full time, since they usually lack such critical benefits as paid sick leave and child care support, and are highly susceptible to layoffs.[17]

Created in 1935 to help widows stay at home and raise their children, AFDC now assumes that mothers with young children will leave the home.[18] The State of Michigan's mandated labor market activity program for most AFDC recipients is representative of new style workfare efforts. Over the past several years, the State of Michigan Department of Social Services (which is being renamed the Family Independence Agency, illustrating the major shift in philosophy) implemented far-reaching welfare reforms that are now required statewide and that have been hailed as a national model.

Michigan was the first state in the country to consider volunteer labor an appropriate welfare-to-work endeavor that could foster readiness for a career. Policy makers believed that being active in any kind of labor activity could enhance competence and self-confidence. In the pilot program, new public assistance recipients in four sites were randomly assigned to either the Social

Contract program or to an exempt control group. In return for public assistance, the clients were socially contracted to spend at least 20 hours a week in volunteer work, community service, self- or family-improvement activities (e.g., drug treatment, noncredit courses, taking a child to a doctor), job training, education, or employment.

An interdisciplinary university-based research team is conducting a longitudinal evaluation of the pilot to assess the impact of the intervention on the psychological and economic well-being of mothers and their children. (See Table 2 for an overview of the methodology, which included telephone interviews and reviews of earnings reported to the state.) Initial results mirror those recently reported in an evaluation of a Washington State workfare program, which found that workfare fostered an increase in employment and training activity, but had little impact on employment and earnings.[19]

TABLE 2

About Study Methodology

The concept for the paper and our discussion of the characteristics and attitudes of families living in poverty was first developed from several hundred interviews conducted in a longitudinal study of welfare mothers who varied in their level of labor market activity. The research project was supported by over $100,000 in funding from a variety of sources, including a matching federal grant from the US Department of Health and Human Services. A second source for this article is a review of innovative public and private initiatives to facilitate the employment of the working poor. While the pioneering efforts of companies are impressive the public sector has to date been far more involved in innovations to improve the career prospects of families living in poverty than have private employers. A third source comes from the literatures from poverty, child development psychology, and careers.

How the Original Empirical Data Were Collected

Sample

- Longitudinal interviews conducted a year apart (spring/summer 1994 and 1995) of an initial completed sample of 212 AFDC mothers and their children (160) between the age of 9 and 13 years
- Random assignment to mandated labor activity and control groups

Data Collection

- Mothers were contacted by mail and phone to acquire written and oral consent to participate in the survey
- Postage-paid envelopes and a toll free 800 number were supplied for clients to contact researchers
- Mothers and children were each paid for the interviews
- Phone interviews were conducted by trained interviewers at times convenient to the mothers and children
- State Department of Social Services offices provided access to archival data from 1993–1996 on clients, and staff time, and matching grant assistance

Survey Respondents

- Respondents were not significantly different from non-respondents on age, ethnicity, education, or number of children on case

The Michigan study found that earnings in 1995 were related to hours of previous paid employment, and to education and employment assets. This suggests that major improvement in the economic self-sufficiency of the poor is unlikely to occur unless employers give them an opportunity to gain employment experience and to enhance their skills. Surprisingly, there was little or no relationship between being employed and the mothers' self-esteem and their involvement in unpaid activity. Interestingly, some members of the control group were as active as those in the social contract group, which contradicts the stereotype that many welfare clients will not work unless forced to do so.

Notwithstanding the mixed results of the pilot program, Michigan's AFDC caseloads are at their lowest levels in 16 years and are among the lowest in the nation. Former clients need to be followed over time to see if they stay off welfare, substantially improve their economic well-being, and move out of the contingent work force. Research also should be done to assess employers' perceptions of the value of unpaid activity as an indicator of employment readiness.

Who Are the Poor? (Many of Them Are Working!)

People With Problems or Potential Solutions to Labor Problems?

If they are to tap the working poor as an organizational resource, employers must understand who they are. Managers also need insight into the psychological, social, and employment barriers they face.[20] National statistics indicate that the poor are largely women and young children. In 1959, 70 percent of families living in poverty with children under 18 years were married couples. By contrast, in 1990 only 35 percent of all poor families had two parents, while 60 percent were headed by single mothers. Today, 82 percent of persons in poor families are women and children.[21] All of our sample were single welfare mothers.

There are three subgroups of poor: a systems dependent core, a middle layer on welfare from two to eight years, and an outer layer of working poor (currently on welfare for two years or less).[22] Thus, there is wide diversity in the welfare population and some recipients are more likely to be employable than others. Using the metaphor of an onion, Corbett offers a conceptual scheme that differentiates among the types of individuals on welfare. The working poor constitute the onion's outer layer (about 30 percent of those in poverty). They are those people who have been on welfare less then two years, but who may have had prior welfare spells, as well as those who are near or below the poverty level but do not receive welfare benefits.

The middle layer (about 40 percent) are those who have limited employment options, very low earnings capacity, and have been on welfare from two to eight years. These individuals are likely to take part in government job training programs. The core layer of the poor (40 percent) are the systems-

dependent with very low earnings capacity and such additional barriers as depression and chemical dependence. These individuals are long-term and chronic users of welfare.

Applying the onion analogy to our sample, we define the working poor as individuals involved in at least 20 hours of labor-related activities a week who had begun new applications or reapplications for welfare benefits in January of 1994. Nearly half (45 percent) of these were involved in 20 hours or more of weekly labor market activity. Even in the less active group, there was only a handful of individuals who were completely idle. As Table 3 indicates, the active working poor and the less active group had similar demographic characteristics in ethnicity, household size, and age. The main difference between groups was that the inactive group had been out of the paid labor market twice as much, and had lower education levels. Surprisingly, nearly half of the active mothers and over a quarter of the less active group had completed some college. Over the third of the active mothers had experience using computers on the previous or current job, compared with only one-fifth of less active mothers. Less labor active mothers were also slightly more likely to be married.

Consistent with national trends, Table 3 shows that at any given time there are more whites on AFDC welfare than nonwhites. However, national studies indicate people of color tend to spend more time on welfare than whites.[23] A national longitudinal study of income dynamics shows that 34 percent of welfare spells last only one year for blacks compared with 44 percent for whites, and 16 percent of spells for blacks end in the second year compared with 23 percent for whites. Yet after seven years, over 25 percent of the AFDC spells for blacks were still ongoing, while the corresponding figure for nonblacks was 6 percent. Blacks who may enter the system at the same time as nonblacks do not seem to have the same opportunities to advance out of welfare, a disparity that has been attributed to inadequate employment opportunities, discrimination, higher proportion of single parent families, and a mismatch between education and skill backgrounds and job requirements.[24]

Welfare mothers are not different from nonwelfare populations in psychological well-being and work orientation. Historically in the US, the poor have been viewed as poor because they "either cannot work, choose not to work, or do not work enough."[25] A classic article from the 1970s, "Are the poor different?: A comparison of the work behaviors and attitudes of the poor and nonpoor," a study of Mexican and Anglo men and women, found that, contrary to the popular view, the minority poor were as work-oriented as the Anglo nonpoor.[26]

TABLE 3

A Comparison of Demographic Profiles of the Active and Less Active Working Poor in the Social Contract Study

Sample Attributes	The Active Working Poor (20 hours or greater of weekly labor market activity)	The Less Active Poor (less than 20 hours of weekly labor market activity)
Number in Sample	N=95	N=117
Ethnicity	40 percent white 60 percent non-white	42 percent white 58 percent non-white
Doing any volunteer work	41 percent	28 percent
Going to school	35 percent	13 percent
Doing any work for pay	51 percent	14 percent
Completed high school	80 percent	60 percent
Completed some college	47 percent	27 percent
Average age of mother	35	34
Average number of children	less than 3	less than 3
Average time out of paid labor market	12 months	22 months
Have worked with computer at least monthly	36 percent	20 percent
Married	11 percent	18 percent
Earning less than $5,000 annually (1992)	81 percent	90 percent

Consistent with this study's findings, our results showed that welfare mothers (both labor active and less active) were not different from nonwelfare populations in psychological well-being and work orientation. Nearly all of the sample liked who they were and nearly two-thirds had high self-efficacy—a clear belief that they could complete tasks they set out to complete.

Another popular notion is that lower-income mothers would rather be home with their children than work, and that they hold traditional beliefs that mothers should be the primary child caregivers. This stereotype advances the view that poor mothers of young children believe they should not work. While this may be the case for some families above the poverty line, the data reported below show that most welfare mothers are highly motivated to contribute to the economic stability of the family. Consider the following mother's remark:

> "There is a stereotype that the general public has that we aren't trying hard enough to get off. This is a myth. We're working but we're not getting enough support to make it. [There is a] myth that we're trying to have babies to get assistance."

There are psychological advantages of paid maternal employment that cut across socioeconomic groups.[27] The knowledge that one is contributing to

the family income and keeping members above the poverty line can be motivating and also can serve as a role model for the children. The high identities of welfare mothers in both work and family roles is consistent with some current research suggesting that employers and researchers should be more attuned to understanding such high involvement in both work and family.[28]

For example, nearly all (94 percent) of the respondents agreed or strongly agreed with statements such as, "I feel I am good or productive in my work." Yet nearly all mothers reported high satisfaction with their families (95 percent) and highly identified with their family roles (93 percent). At the same time, most (61 percent) did not feel that they should be able to stay home with their children full time even if it meant staying on welfare. The vast majority (91 percent) felt it was important to be involved in activities outside the home. While most reported that working at home was considered an important job (83 percent), two-thirds (66 percent) of the entire sample felt that working was the most important and satisfying activity, a rate that was only slightly higher (71 percent) in the active segment.

Behavioral information supports these self-assessments. At the time of the first interview, about one third (half of the active and 14 percent of the inactive) of the women in the study were employed, another third were looking for work, and the remaining third were unemployed and not seeking work. By the second interview a year later, more than half (52 percent) of all the women were working for money at least part time.

Children in our entire sample of welfare recipients had high levels of self-worth and were similar to those children from a nonwelfare population. There were no statistically significant differences between these two groups of children on five of the six dimensions of child self-worth, which included scholastic competence, social competence, athletic competence, behavior/conduct, and global self-worth. On the sixth dimension of appearance, the children in the welfare population rated themselves significantly *higher* than the children in the nonwelfare population. The children in the welfare sample had adequate school performance, with average grades in the high C/low B range for social studies, science, math, and language arts.

Children were asked to respond to the question, "When you are an adult: what job do you think you would like to do?" The responses included: pediatrician, nurse, teacher, doctor, basketball player, zoologist, veterinarian, lawyer, author, and heart surgeon. Thus, not only are welfare children's parents interested in employment, the children have healthy career aspirations that are nurturable. While studies on the intergenerational transmission of poverty find a .4 correlation between being on welfare if one's parents were poor; over half the people who grow up in the bottom quintile of income distribution will not be there as adults.[29] Upper elementary school children (3rd through 5th grade) in these poor families seemed to be resilient at this age, and somewhat buffered from their mothers' career stresses.

Training and labor market preparation is minimal for some welfare mothers and therefore economic opportunity may be somewhat limited. For the group of women who must be employed to ensure family self-sufficiency, the

barriers can be overwhelming, and sometimes cancel out some of the usual positive psychological aspects of paid employment for women. Some women on welfare simply have limited job opportunities. In the words of one:

> "Training is good but nobody wants to give you an entry level job. Lord knows I have so many certificates. . . . (We) need corporate partnerships. Part of it is stereotypes against public welfare clients and nonwhites. I've been through 150 interviews. You're lucky if 2 percent of people in my classes get hired."

Even when hired, many are stuck in low paying jobs offering little room for advancement. Three-fourths of our sample had jobs ranked below 20 on a standard socioeconomic scale ranking jobs ranging from 1 to 100. Such jobs as food service worker, file clerk, nurse's aide, and clothing presser contrast starkly in skill and earnings levels with a computer systems analyst, which ranked 74.1 on the scale.

Most of the sample reported a lack of employment opportunities. Only about half believed that they could get a job to support their household. Most (75 percent) agreed that today's jobs do not have adequate benefits or pay wages high enough to increase the quality of their lives. Nearly half (48 percent) felt unable to provide material necessities.

Child care, family demands, and transportation are other significant barriers to successful labor market involvement.

> "I hate not working. I'd love to work if I had day care."

> "I walked two miles to catch a bus this summer, and I didn't mind, but the public transportation isn't always available."

> "My son has learning disabilities. If I went back to work, he would go back to where he was academically and emotionally."

Half the sample indicated at least one barrier to getting off welfare. Child care (60 percent), transportation (60 percent), family issues such as domestic violence and substance abuse problems (50 percent), and health problems (38 percent) were the major barriers to involvement outside of home. Nearly all of the respondents noted at least one barrier (86 percent) that kept them living in poverty. The most frequent were a lack of job opportunities (one third), and a lack of medical and general benefits (one fifth). In sum, while the welfare mothers possessed positive feelings of self-worth, positive attitudes toward working, and some job skills and experience, they also faced major barriers against steady employment.

Finding quality child care can be an obstacle for many employed mothers, but is particularly challenging for families that lack financial resources. Quality child care is costly, leaving the disadvantaged and minority populations of women, the women who must be employed out of economic necessity, in the worst possible situation. The typical child care setting for children from families with little resources will be substandard. Low-quality child care has been shown to have damaging effects on children.[30] On the other hand,

the effects of living in poverty are equally devastating. The issue of child care support from employers has been addressed in only a small portion of companies, and what is being done can help, but will most likely not be sufficient for low-income mothers.

The net pay that a woman brings home from a low-paying job after she pays for child care may not be enough to justify employment, offsetting the desire to work by the costs of working. As one welfare mother remarks: "I had a job. I went in the hole because all my money was going to day care." Insensitivity to the needs of single parents, inflexible work hours, and lack of support for taking leaves, can also contribute to the strain of employees who are managing both work and family. If low-income women want to stay off welfare, they must be employed; yet they usually hold low-paying jobs that make it difficult to afford high-quality child care. This increases their guilt, their role strain, and may ultimately have negative influences on their children and their work.

Women in every socioeconomic group are likely to experience some degree of role strain from balancing employment and family demands. For women in lower socioeconomic groups the strain may be particularly great. Although the job demands for some women may not be numerous, they cannot afford to purchase the goods and services that would ease role strain (i.e., fast food, a housekeeper, a fitness center membership). Hence, they are literally working two shifts because they must still manage the household as well as do the job. Some women may be forced to leave jobs because the advantages do not outweigh the strain, and those who stay employed may experience frustration, poor performance, and poor morale. Role strain among women in poverty is lessened when employment status is consistent with employment preferences.[31] Workers with high levels of role strain do not become assets to their employers.

Taking Action: Organizational Strategies to Close the Gap

Changing Frames

Employers need to start viewing the working poor as an employable resource instead of as disposable labor. Employers must develop a company vision that links the employment and development of the working poor with the achievement of business and strategic objectives. Rather than assuming that high turnover in low-wage and low-skill jobs is the most cost-effective way of managing, organizations need to recognize the economic and organizational benefits of helping the working poor.

A first step in developing this vision is to socialize key managers to stop viewing the working poor as throwaways stuck in low-paying jobs with little upward mobility. There is a cost to employers in having workers in what Rosabeth Moss Kanter once referred to as stuck jobs, jobs without futures. Organizations need to think of minimum wage jobs as stepping stones to better positions. Figure 1 provides a summary of career stepping stones that help the working poor develop long-term career goals and interests.

Recognize that Work is Part of Life.

Employers also need to train their recruiters and managers to develop greater appreciation of generic workplace skills and lifetime learning experiences. Working at McDonald's, as custodian or hotel maid, or volunteering at a church day care center all can teach someone "the ability to work under pressure, follow company rules, willingness to work, ability to get along with others, attendance, and the chance to organize and plan work."[32] One study found that 37 percent of the variance of all variables affecting employability was explained by these factors, which are absolutely essential for most if not all jobs. Most employment systems do not view the skills gained in minimum wage (often service) jobs as generalizable to better paying jobs, let alone to better careers. Thus, the entry level skills that are most likely to be available to the working poor are least valued by employers.

Change the Kinds of Questions You Ask

Instead of measuring student accomplishment only by grades and class ranking, employers across the nation are working with educators to help students and job applicants assemble selections of their work in portfolios. For example, Vermont and Kentucky have portfolios that focus on problem solving and writing. Large employers such as Kelly Services, the Ford Motor Company,

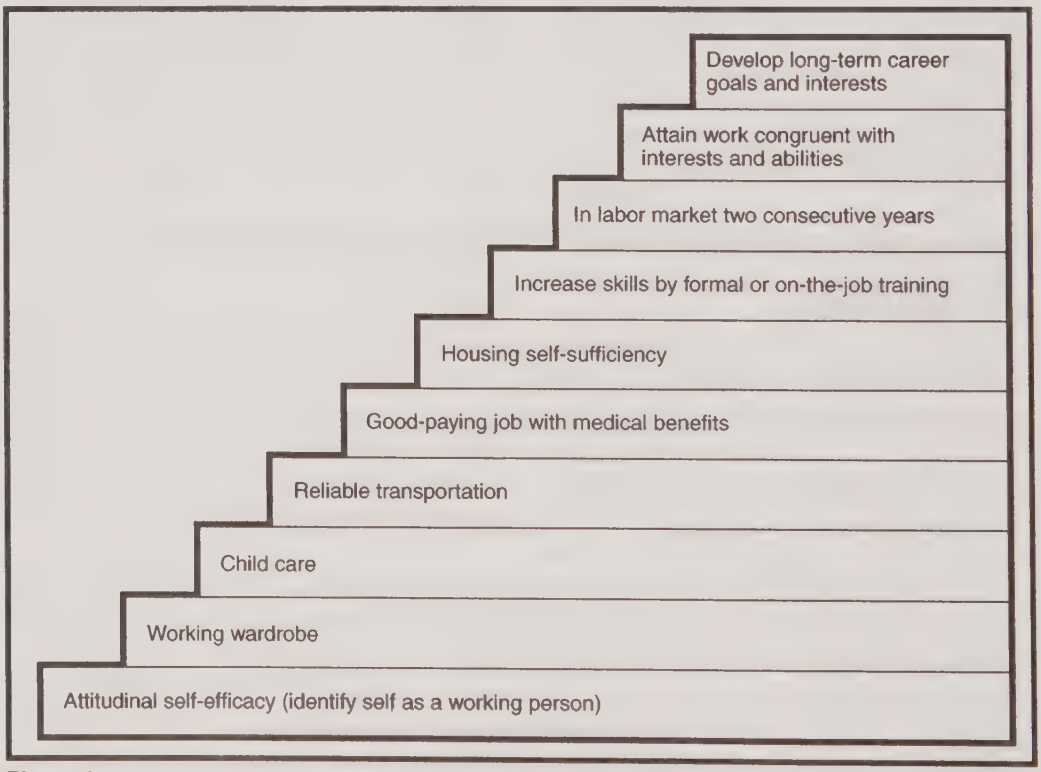

Figure 1
Career stepping stones of the working poor.

and the Consumers Power Company have developed benchmark standards that define teamwork and personal management skills, along with traditional academic skills. Many of these skills can be assessed not through testing but through portfolios that offer samples of work, or through written testimonials, letters of recommendation, certification of career exploration and job shadowing experiences, and other forms of documentation.[33]

For this approach to succeed employers need to ask new questions—such as "Do you have a portfolio or some documentation of your work, school, and/or volunteer experiences that you could bring to an interview?"[34] Traditional selection methods such as referrals, work histories, and testing exclude the urban poor, who are largely minorities. These established ways of assessing employability skills may need to be changed to take into account the life experiences of the working poor. For example, participating in sports is often used as a predictor of teamwork competency. But single parents and the working poor, who may not been involved in extracurricular activities, may have parallel teamwork experiences.

Invest in Urban Labor Markets

A recent national study found that living in an urban area lengthened welfare spells for both whites and blacks.[35] Based on a survey of three thousand employers in New York, Boston, Detroit, and Atlanta, labor economist Harry Holzer recommends tough measures in a new Russell Sage Foundation book, *What Employers Want*. The alarming job shortages already faced by low skill urban workers are exacerbated, Holzer says, by selection requirements that value cognitive complexity, teamwork, customer satisfaction, and specific experience. Companies like Chrysler have succeeded in building a state-of-the art plant in the Detroit area, while in Los Angeles, some supermarket chains have invested in poor areas and are experiencing very good profit levels.

Establish Business Partnerships With Government and Public Education

The public and private sectors are disconnected in their labor market activities. While government bureaucrats try to enhance the employability of heads of families living in poverty, employers have to provide remedial training to as much as a third of new workers. A joint report by the US Department of Labor and the American Society for Training and Development suggests that employers who want to bring their own workers up through the ranks need to make substantial investments in education and build long-term linkages with educational institutions.[36] Concerted collaboration is needed to produce better transportation systems between the suburbs and the cities, more effective adherence to antidiscrimination laws, targeted training of individuals with good employability indicators, and aggressive job creation.[37]

Establish Geographic and Industry Consortia to Reduce Barriers to Labor Market Entry and Retention

Other isolated from one other, as well as from public policy, employers should establish industry sector and geographic consortia. For example, urban

employers may wish to band together to support transportation, day care, or housing services that can help the working poor. Employers in rural areas where services are scarce and workers must travel great distances may benefit from cooperating together and partnering with each other and local government to improve employment support services. Employers in industries where there have been massive displacement of workers with similar skills might also work together and with unions to develop major initiatives.

Increase Formal and Informal Investment in Work-family and Community Supports

Employer-sponsored child care has the greatest impact on recruitment and retention of employees, and therefore can be a critical barrier to labor market success.[38] Continued investment in such programs could enhance access to productive work for mothers of all socioeconomic levels. Increasing access to day care for low-wage workers, as Burger King did, may also have positive psychological effects on low-income children, since children with the poorest school and psychological outcomes were those with mothers who wanted to work but were unemployed. Even for teenage parents, the economic condition of their household is more likely to predict child outcomes than their age.[39] A two-decade longitudinal study following poor American children into adulthood identifies the generally positive influence of maternal employment and investment in parents' education as a predictor of later success, even though such parents spend less time with their children.[40]

Support for employees who volunteer to strengthen families and their communities is another possible HR strategy. Workers and managers need to be socialized that volunteering is a valued employment activity and even part of one's job. Employers should offer flexible hours to support volunteering and rewards to employees who do well on their job while also actively strengthening their communities.

Implications for Action Research

Scholars can help, as well, by partnering with executives to improve understanding of the working poor. Some troubling gaps in current theory may be eliminated by focusing more on the working poor in organizational studies. Studies are needed on predictors of the ability to self-manage jobs and careers and of career resilience. Some working poor who have struggled to be sole providers for their families and have had multiple job experiences across firms may have self-management capabilities equal to those of individuals who have spent their careers in large companies with traditions of manager-driven career planning.

Career theory is being revised to fit the new career context, but this reconceptualization could even go farther to capture the world of the working poor. Hall and Ritcher, for example, define career as "a series of work-related experiences, events, and the person's reactions to these events, which occur over the span of the person's work life."[41] While they are careful not to define

success in terms of promotion, salaries, and tenure, neither do they discuss reactions to unemployment, failure, or job-hunting frustrations—all critical life experiences of the working poor and for increasing numbers of all employees.

Leading career researchers argue that a career should be thought of as a lifelong sequence including all work-related experiences (whether paid or not) and not strictly limited to a single profession or occupation.[42] But volunteering to babysit a neighbor's children or shoveling snow from an elder's sidewalks may not lead to work or to the attainment of employability. Our definitions and assumptions need refinement in order to identify activities that are most likely to lead to paid employment, improve career prospects, and add value to employers. All work experiences may not necessarily lead to a better life.

Research and practice on work/family integration also may need to be revisited. Statistics suggest that almost half of all children under 18 born in the last decade in the United States will spend part of their childhood with a single parent (usually female).[43] Three-fourths of all black children born in the early 1970s spent at least some time in a female-headed family, compared with one third of white children.[44] Therefore, scholars and employers need greater understanding of the issues of single provider families, as contrasted with single earner, dual earner, and career families.

Research on women's career development has also tended to focus more on the problems faced by homemakers and dual career women; single parents have been viewed as deviating from the norm.[45] In a recent book on women and careers, the few pages devoted to single mothers focused on their attitudes toward dual career relationships.[46] We need greater understanding of how single parents are socialized to think about careers and job involvement when providing a subsistence for their families may be their basic focus. Work is also needed on the effects on children of a sole economic provider/caregiver's prolonged unemployment or employment. We also need to better understand how the work and nonwork demands and resources of single providers affect their own psychological and job functioning. These individuals may even have higher career aspiration levels than those in two parent families with a primary breadwinner.

In short, the definitions and assumptions underlying career and work/family research and practice need to be reconceptualized to provide greater focus on unemployment, unpaid labor market activity, single parenting, linkages between child development and labor market activity, and perceptions of the perceived utility of the costs of labor market participation (child care, transportation, work attire, lunch expenses) compared with views of earnings requirements to support a regular standard of living above poverty. These issues are relatively common career concerns for a growing work force segment. The working poor are not that different from an increasing cadre of lower level salaried and union workers. Some would rather be home with their kids than scraping out an existence. Many may be one unanticipated divorce or job loss away from living in poverty.

The End of a Dream

Working one's way up from the bottom may no longer be possible for many Americans—middle class as well as poor. Starting out in the mail room with minimal schooling and climbing the ladder to a professional or senior management position isn't likely in a time of massive restructuring, downsizing, outsourcing, and heavy use of contingent labor. Even professionals and managers may experience long-term unemployment. Employees are no longer human resources; they are labor costs.

But over the long run, employers will lose if more and more workers have low wages and little or no job security. Employer strategies that invest in workers' education, knowledge and skills, and family well-being, and that provide greater employment protection and opportunity to develop on the job, are not merely socially responsible actions to enhance the employability of the working poor. These strategies enable all employees to contribute more effectively to the bottom line, which ultimately benefits business.

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About the Authors

Ellen Ernst Kossek is an associate professor of human resource management and organizational behavior at the School of Labor and Industrial Relations at Michigan State University. She holds a PhD in organizational behavior from Yale, an MBA from the University of Michigan, and an AB from Mount

Holyoke College. Her research interests focus on human resource policy, diversity, work/life integration, and careers.

Melissa Huber-Yoder is a doctoral candidate in ecological/community psychology at Michigan State University. She has a BA in psychology from Goshen College and an MA in psychology from Michigan State. Her research interests are school and community influences on youth empowerment, and person-environment fit in youth settings.

Domini Castellino is a doctoral candidate in developmental psychology at Michigan State University. She received her bachelor's degree in human development and family studies from The Pennsylvania State University and her master's degree from Michigan State University. Framed by a developmental contextual perspective, her research interests include maternal employment, mother-child relationships, and adolescent achievement and career development.

Jacqueline V. Lerner is a professor of education and developmental psychology at The Pennsylvania State University. Her research includes the study of typical child development in the context of the family, with a focus on the work of mothers and family roles. Her other research includes the study of child temperament and early adolescent transitions.

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Responsible Care® and Worst-Case Scenarios in the Kanawha Valley, USA

O. Homer Erekson and Pamela C. Johnson

What is the role of community-industry dialogue in hazard management?

In December 1984, a Union Carbide plant in Bhopal, India suffered a major leak of methyl isocyanate (MIC), "the single most astonishing and terrible event" in the history of the chemical industry, according to Union Carbide CEO Robert Kennedy.[1] This accident attracted international attention with more than 3000 people dying and an undetermined, but in the tens of thousands, number of individuals injured. Despite the international uproar and the resulting criticism of the chemical industry, for many persons living far distant from Bhopal, the reality of this industrial accident may have been understated.

Such was not the case for the chemical industry. At the 1984 annual meeting of the Chemical Manufacturers Association (CMA), board chairman William G. Simeral noted that "while the industry saw itself as a producer of high-tech jobs and exports, the public saw only leaking drums and hazardous waste sites—and that image meant trouble for the industry."[2]

And these concerns were of no greater importance anywhere than in the Kanawha Valley surrounding Charleston, West Virginia, an area with a population of approximately 250,000. Spread along the valley were eight different chemical companies operating fifteen different plants or technical centers (see Figure 1). These companies realized that the same thing could happen to them. In fact, in August 1985 135 residents of the Valley were treated following a release of 500 gallons of aldicarb oxime from the Union Carbide plant in South Charleston.[3] Moreover, the chemical plants in the Valley listed over 400 small leaks and 32 reportable leaks from 1989–1993. Heightening the concern of the public was the revelation by the Rhone-Poulenc Institute plant (purchased from Union Carbide in 1986) that over that time period, there had been 43 small leaks of MIC.[4]

Clearly the citizens of the Valley, many of whom were employees of the chemical companies or their relatives, became increasingly concerned in the early 1990s as they discovered more about the risks to the community. In January 1992, Pam Nixon, chairwoman of People Concerned About MIC and a person hospitalized from an earlier chemical accident, made a written request that chemical companies release their worst-case scenarios.

In this environment, how should a company and an industry respond to the need for public dialogue on the existence of toxic risk to a community? Here we will see the story unfold as to how the Valley and the chemical industry responded.

Regulatory Environment

After the December 1984 Bhopal incident, the U.S. Environmental Protection Agency (EPA) formed a Chemical Emergency Preparedness program, which was expanded in 1986 when Congress approved the federal Emergency Planning and Community Right-to-Know Act. Although these actions increased company responsibility in risk management and public information, the requirements escalated in October 1993, when the EPA proposed a rule under the Clean Air Act calling for a Risk Management Plan that requires companies to develop a Risk Management Program that includes a *hazard assessment* program with a five year release history (including the size, concentration, and duration of releases) and consideration of a range of release (including *worst case scenarios)*, a prevention program, and an emergency response program, along with a risk management plan documenting the results of the facility's risk management program. These were to be provided to the EPA, the Chemical Safety and Hazard Investigation Board, the state emergency response commission, the local emergency planning committee, and the *public*.

A major focus of the risk management programs would be the worst case scenarios. They were defined as *the loss of all of the regulated substance from the process in an accidental release that leads to the worst offsite consequences.*

But Craig Matthiessen, Director of Chemical Accident Prevention at the EPA, said "the worst case is not the objective. The goal is prevention and preparedness and response, and the worst case is the road to that goal. The purpose is to ensure that facilities take steps to reduce the likelihood and severity of accidental chemical release that could harm the public and the environment . . . and to ensure that the public and state and local governments receive facility-specific information on potential hazards and the steps being taken to prevent accidents."[5]

The final rule from the EPA for this program is expected March 1996. Companies will then have three years to comply.

The Chemical Industry Responds

The Chemical Manufacturers Association (CMA) is an industry-wide trade association that provides technical support in areas such as toxicology, bio-

chemistry, engineering, and environmental affairs, lobbies the federal government on behalf of the association's chemical producers, and provides a forum for company executives to exchange views on issues of common concern.[6] As of June 1995, CMA consists of approximately 191 members who represent about 90% of the nation's basic industrial chemical manufacturing capacity.

In April 1985, in response to the Bhopal accident, CMA developed the Community Awareness and Emergency Response (CAER) program. Initially, this was a voluntary program designed to help assure emergency preparedness and to foster community right-to-know. Jon Holtzman, CMA's Vice President for Communications noted that, although plant managers initially balked at sharing potential risks at their plant sites with the public, "the plant managers learned that no one wanted them to leave town. They just wanted to know they and their families were safe."[7] As the CAER program was being implemented throughout the United States, four significant results began to emerge:

- the public voluntarily was given access to potentially damaging information;
- the EPA was persuaded that the industry was in earnest about making progress;
- the performance of local plant managers began to change;
- in drafting Title III of the Superfund Amendment and Reauthorization Amendment (SARA), legislators adopted whole sections of CAER.[8]

However, even with the early successes of CAER in the United States, CMA began to observe similar activities in Canada. The Canadian Chemical Producers Association (CCPA) was taking a more broad-based approach in formulating a program it termed "Responsible Care," that involved codes of practice for transportation, distribution, manufacturing, research and development, and hazardous waste operations. The program was a formal condition of membership in CCPA. Interestingly, in the Preamble to the CCPA Codes of Practice, it states "Member company performance must reflect the concerns, needs, and values [of the stakeholders] . . . this is ethical thinking, decision-making, and performance."[9]

In 1987, CMA convened a meeting of CEO's and other leaders of the United States chemical industry to consider development of a similar broad-based program. In September 1988, Responsible Care® was unanimously approved by CMA's Board and subsequently adopted by 170 member companies as an obligation of membership in CMA.

Responsible Care® is organized around a set of ten guiding principles (see Appendix 1) and six Codes of Management Practice.[10] It commits the chemical industry to responsible management of chemicals from development through production, distribution, and ultimate use. The six Codes of Management Practice are the Community Awareness and Emergency Response (CAER) Code, the Pollution Prevention Code, the Process Safety Code, the Distribution Code, the Employee Health and Safety Code, and the Product Stewardship Code.

For the purposes of this presentation, two codes are especially relevant. The goal of the CAER Code is to "assure emergency preparedness and to foster community right-to-know. It demands a commitment to openness and community dialogue. The code has two major components: first, to assure that member facilities that manufacture, process, use, distribute or store hazardous materials initiate and maintain a community outreach program to openly communicate relevant, useful information responsive to the public's questions and concerns about safety, health, and the environment; and second, to help protect employees and communities by assuring that each facility has an emergency response program to respond rapidly and effectively to emergencies."[11]

The Process Safety Code "is designed to prevent fires, explosions, and accidental chemical releases. The Code is comprised of a series of management practices . . . based on the principle that facilities will be safe if they are designed according to sound engineering practices, built, operated and maintained properly and periodically reviewed for conformance . . . The Code must be implemented with full recognition of the community's interest, expectations and participation in achieving safe operations."[12]

In both of these codes, it is clear that efforts are made to develop close relationships between participating companies and their communities. Charles Aldag, Chairman of the Responsible Care® Coordinating Group, has noted that to be successful, Responsible Care® has to address performance, process, and dialogue issues. "The experience of the chemical industry in the 1980s showed itself as a performance problem. But the heart of the codes is process failure. This could only be remedied by involving the community in open and frank dialogue about the potential risks facing neighbors of chemical plants. Fundamentally, environmental responsibility is a matter of ethics."[13]

With the momentum of a set of well-articulated Codes of Management Practice endorsed throughout the chemical industry, CMA then set its course to work with local plants to begin to demonstrate the application of Responsible Care®. One significant window of opportunity was to encourage companies to take the lead by voluntary participation in a worst case scenario community forum, well before the Clean Air Act rules would be promulgated.

What better place to launch this venture than in the Kanawha Valley. There was a high concentration of chemical plants in the Valley, with 15 plants running along the Kanawha River 10 miles east and 15 miles west of Charleston, West Virginia. With a history of accidents, not only in the chemical industry, but age-old accidents from the West Virginia mining industry, there was considerable distrust between company management and its employees and the general public.

Worst Case Scenarios in the Kanawha Valley

"We know that you guys can kill us. Just tell me what you are doing to prevent that from happening."

The sentiment behind this haunting statement had lived in the Kanawha Valley for many years. In 1992, the chemical companies in the Valley were to

begin facing its significance in a manner heretofore not seen in any industry, particularly their own.

The Kanawha/Putnam Local Emergency Planning Committee (LEPC) was established in 1987 as part of the Emergency Planning and the Community Right-to-Know Act. Its membership included representatives from law enforcement, fire departments, emergency medical services, environmental groups, hospitals, industrial facilities, and local communities. It was to this group that Pam Nixon made her request for three worst case scenarios from the local chemical plants.

Consider the magnitude of this request. The chemical companies were being asked to identify three compounds each and to convey to the community the worst conceivable accident that could occur with no safeguards in place. With the specifics of the Clean Air Act three years from development, there were very limited guidelines in place as to how to choose the chemical compounds to be included, how to define a worst case scenario and a more probable scenario, which technical model to use and what assumptions to make in that model, how to elicit cooperation among the plants within the Valley, and how to communicate to the public in an informative, but non-alarming manner. Richard (Dick) N. Knowles, then plant manager for the DuPont Belle plant, noted: "We were faced with a challenge that could threaten the existence of our facilities, if we didn't do the communications openly, thoroughly and well."[14]

Although there would be support in the form of workshops and input from CMA in Washington, D.C., the burden of the work from the industry perspective would fall directly upon the plant managers and other employees. Their framework for reference would be the CAER Code. Richard M. Doyle, Vice-President for Responsible Care®, adds, "CMA can provide encouragement, and support for our members' efforts in carrying out the Responsible Care® initiative, but in the end it's the men and women throughout the chemical industry that have the responsibility to see that it works. This is no small task, but is essential if we hope to improve the chemical industry's performance and ultimately earn the public's trust."[15]

Worst Case Scenarios and the Experience of One Company and its Plant Manager

Dick Knowles came to the Kanawha Valley from Niagara Falls where he came as plant manager five years after Love Canal. There he faced a community that still was in deep grief because of mistakes within the chemical industry. Dick's years in Niagara Falls were personally transforming. He says that it was there he learned in meetings with people in the community that "*listening* to people was really half of the process of healing . . . and that trust is hard to build—it is very fragile." He went on to say that his benchmark question became, "Would I put my most loved one at the plant fence and let them live there for 70 years?"[16]

Coming to the Kanawha Valley, Dick Knowles found a community with vital chemical plants where "business was great, but you had to hold your noses when you went by our plant."

Moreover, because of the long standing mistrust alluded to earlier, he also found the situation between the plants and the community, especially the newspapers, as being very adversarial. It was in this environment that the chemical companies were to consider holding worst case scenarios.

The worst case scenario process was organized and directed by the Local Emergency Planning Committee (LEPC). The formation of this group was mandated by regulation. The leadership of the LEPC were volunteers from the public. The resulting collaboration with the industry people provided a basis for the development of trust in the process.

In the Fall 1992, two committees were formed by the LEPC. Figure 2 provides a schematic of the Hazards Assessment Project organization. The Hazard Assessment Committee was charged with development of the technical description of the hazards that existed and the risks posed to the community. It was headed by Dr. Paul Hill, President of the National Institute for Chemical Studies. The Hazard Assessment Committee was to establish the process to allow the chemical plants to uniformly evaluate worst case scenarios and associated risk information using common criteria. It was to involve citizens, industry, and government at all levels of planning and communication.

The Risk Communications Committee was charged to develop a process to allow the chemical facilities to communicate worst case scenarios and associated risk information to the community. This included producing written documentation compiling worst case assessments in a clear, concise, and readable form, and development of a public forum by which worst case information could be communicated to the public. It was cochaired by two members of the public and one industry representative. One of the cochairs of the committee, Mary Frances Bleidt recalled, "We were hoping to create a sense of community, not scare the hell out of people."[17]

Another important organizational feature was the hiring of JBF Associates, Inc. *by the LEPC* to serve as an independent third party reviewer of the Hazard Assessment Project. This was a nationally recognized consulting firm who had performed hundreds of hazard analyses and risk assessments on chemical processes with a reputation for high quality work and a "call-it-like-we-see-it" ethic. They were asked to provide technical advice, perform quality assurance reviews, ensure analyses were performed using generally accepted practices, and assist in interpretation of the results.

The organizational pieces were in place. The committees began their work. Still, the next few months saw the process struggle. Dick Knowles described how the plant managers went from a point of *"denial* to *terror* to *community building."*

Denial

The local plant managers were under considerable pressure by local environmental groups and the newspapers. Pam Nixon reflected the initial skepticism

of many of the local citizens when she said, "There were a lot of engineers, and they had confidence in the safety measures—many were redundant systems—and so they said that accidents that assumed a total lack of safety controls couldn't happen . . . The work of the committee was slowed down because of plant reps and corporate people who would fly in to hear what assumptions we were making and why—then at the next meeting, there would be someone new from corporate, and we had to keep explaining over and over again."[18] Some citizens complained that meetings were set at inconvenient times to fully involve the public.

In reflecting upon the frustration of the plant managers at this early stage, Dick Knowles offered, "Plant managers don't like getting beat up. But if you come in with an intense level of love, care and authenticity, you can work through this with the community. If people feel trusted and part of the process, it can be beguiling. You must be careful not to manipulate the process. You have to be able to look at yourself in the mirror and ask if what you are doing is right. And while you're doing it, you'd better have your plant living up to the highest ethical standards—because if you have a double standard, your employees will talk."[19]

Terror

During the latter part of 1992 and into 1993, two crucial organizational themes were at work. First, the plant managers decided to respond jointly. Dick Knowles commented: "Perhaps, it was an issue of vulnerability—we probably felt there was safety in numbers. Also, it was a very complicated technology and it was important to have consistency and coherence in how we presented the information. We probably felt that we could have more influence as a block within LEPC and in the community."[20]

Second, during the late summer of 1993, many plant managers became increasingly concerned about the progress of the technical work in defining worst case scenarios and developing the necessary models. There was a move to slow the process down, to move control of the process from the LEPC back to the companies. At a major meeting in August 1993, there was a proposal to reorganize the process and get the committees under the control of the managers. Dick Knowles maintained his belief in full disclosure and full participation by the public in the entire process, including the technical aspects. Some of the other plant managers replied, "You'll make us look bad. You'll ruin it for the rest of us." The meeting ended on a very tense note as Dick Knowles was considering whether to break ranks and move ahead with full communication of the worst case scenario for ammonia. He said: "I am concerned with what is the right thing to do, and I am also responsible to look out for DuPont stockholders. This is right for the community and for DuPont. The only choice in my mind was between the *certainty* of failure if we took back control of the committees, and the *possibility* of failure if we did it in a more open and participative way."[20]

The very next day, the Rhone-Poulenc Institute plant had a major explosion, killing one person and injuring several others. The community had to

shelter-in-place. This event had a profound effect on moving the Hazard Assessment Project ahead. There was no longer a choice as to whether companies would participate fully. The community demanded the worst case scenarios be developed and publicly distributed.

Community Building and Technical Challenges

With the new momentum in place, the Hazard Assessment Committee began to formally specify the method for determining worst case scenarios. This process involved stakeholders from the entire community, including industry, government leaders, the emergency response community, and the general public.

There were several technical issues to be determined:

- *Determination of scope of analysis:* Each plant would prepare a worst case scenario (with no safeguards) and a more likely accident scenario (with safeguards).
- *Choice of benchmarking model:* The CAMEO/ALOHA computer model was chosen as the benchmarking model for all plants. However, companies could also provide supplemental information using any additional software available.
- *Definition of models:* Each plant agreed to provide a worst case scenario and a more probable scenario for up to three chemicals (see Table 1 for a list of the companies and chemical compounds).

  Worst-case scenario: Defined as the catastrophic failure of the largest single chemical vessel or pipeline which results in worst off-site consequences, releasing the contents over a ten-minute period under the most stable weather conditions (almost no wind). No passive controls (e.g., a dike), administrative procedures (e.g., maintaining storage tanks below maximum capacity), or emergency response capabilities were allowed in the scenarios.

  More probable release scenarios: Defined with smaller quantities of materials released under most stable weather conditions, with existing control procedures and systems in place; it was necessary that the plume resulting from the scenario would have to cross the plant fence line.

- *Measurement of health effects:* Following the EPA's Technical Guidance for Hazards Analysis "Green Book," health effects from the scenarios were calibrated using the Emergency Response Planning Guidelines (ERPG) levels two and three. ERPG-2 is the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one hour without experiencing or developing irreversible or other serious health effects or symptoms which could impair an individual's ability to take protective action. ERPG-3 is the maximum airborne concentration below which it is believed that nearly all individuals could be exposed for up to one

hour without experiencing or developing life-threatening health effects. Where ERPG data were not available for certain chemicals, alternative standards for determining health effects had to be identified, and in the case of flammability, the level at which there would be significant community impacts had to be determined.

In Fall 1993, each plant then began the formal development of its scenarios using the LEPC parameters. The process was supported by Responsible Care® CAER Code workshops on worst case scenarios. DuPont Belle provided a model for anhydrous ammonia that was accepted as a format by all of the plants. The plume model, demonstrated in DuPont's model in Figure 3, was a relatively simple visual representation of a complex scenario that could be communicated effectively to the public and provided a basis for comparison across plants. The inner circle closer to the plant showed the area subject to the EPRG-3 (life-threatening health effects) level. As shown, for DuPont Belle, the worst case scenario reached a 25 mile radius extending in the same direction as the wind. The outer circle showed the area subject to the EPRG-2 (serious health effects) level, and extended 33 miles for DuPont Belle. The lower chart in the same figure showed the more likely accident scenario, with the EPRG-3 radius reducing to only 0.56 mile and the EPRG-2 radius extending only 1.4 miles. In reviewing the scenarios modeled for all plants, the worst-case scenario hazard zones ranged from less than 0.5 miles to greater than 25 miles, with 52% of the ERPG-2 hazard zones being less than 6 miles. The more probable scenario hazard zones ranged from 0.2 miles to 6.2 miles, with 59% of the ERPG-2 zones being less than 2 miles.[21] In addition to the plume models, the risk management plan summaries included a five year history of the release of the chemical compound, uses for that compound, and prevention and emergency strategies of the plant.

Was the hard work finally over? Clearly, a lot of energy, patience, and technical consultation had resulted in a remarkable collaborative effort on the part of chemical companies in a competitive industry, along with extensive participation of multiple stakeholders, to agree upon the technical specifications of the worst case and probable case scenarios. But looking back on the process, those involved expressed the consensus view that what was ahead would be the most difficult steps to take.

The Road to Safety Street: Communication

In agreeing to reveal the detailed information on worst case and probable case scenarios, along with the five year history of accidents, the chemical companies in the Valley had shown good faith in an open stakeholder-based process. Clearly, the involvement of the public at all levels was consistent with both the CAER Code and Process Safety Code's guidelines.

Part of the responsibility of stakeholders is then to use the information provided by industry in a fair manner that conveys full information to the public. The Risk Communications Committee was charged with developing the means of providing results of the risk management plans to the public. It

was assisted on the industry side by Dick Knowles, Tom Neinhammer, Thad Epps (Union Carbide), and Tony LaLonde (FMC).

Working hard during the later Fall of 1993, the Communications Committee proposed that there should be a very open public forum to communicate the results. The decision was made to hold a program entitled *Safety Street: Managing Our Risks Together,* not only to have a formal seminar at the Charleston Civic Center, but also to go where people naturally congregated in the Valley—in the mall!

This decision was not greeted warmly by industry officials. In spring of 1994, the Responsible Care Coordinator meeting of CMA was held, with about 180 people, some of whom were CEOs. Dick Knowles reflected, "Some were not happy at all—especially when they heard that Safety Street was escalating to the mall. Everyone was worried—would '60 Minutes' show up? They called it a 'scare fair.' . . . Back in the Valley, I could see the community coming together. But there was a lot of industry pressure and anxiety about the possible public reaction that would result. Everyone was getting tense—we had only one chance, and it had to be right. There were no dress rehearsals. So for planning purposes, many of us were on this thing like a blanket."[22]

Indeed, plant managers and others met with the hospital association to discuss their emergency response plans, with local government officials, and other stakeholders. Dick Knowles even brought a set of junior high school students into the process, including the committee meetings. "Their presence truly changed the committee meetings—brought an openness and an authenticity."

While the communication efforts were proceeding, JBF Associates, Inc. was performing quality assurance reviews and the Hazard Assessment Committee was working hard to secure remaining technical issues and to provide guidance for final data submission to the LEPC.

Then on June 3–4, 1994, "Safety Street" was held starting with a seminar on the first day at the Charleston Civic Center. The purpose of the seminar was to present the worst case and probable case scenarios in the morning and then to provide unlimited access to plant personnel and their information in booths in the afternoon and in the mall the next day. Presenters included members of the LEPC, local citizens, the Director of Chemical Accident Prevention for the U.S. EPA, plant managers and other industry personnel, the President of JBF Associates, Inc., and other community leaders.

Epilogue

Approximately 700 people attended the first day session, with ⅓ from out-of-town, ⅓ from the community, and ⅓ from local industry. Estimates of participation at Safety Street events in the mall ranged from 3000–5000 persons. There were no reactive demonstrations, but rather genuine questions and dialogue. Leaders from industry and the public reported satisfaction with the event, and there was a climate of improved trust with increased expectations for further openness and dialogue.

Following Safety Street, the Community Emergency Response Evaluation Group (CEREG) was formed with the objective of evaluating the effectiveness of community emergency responses for each worst case and more probable case scenario presented by the chemical facilities. They have been in the process of assessing the internal emergency response plans of each chemical plant, and also will assess the emergency response plans of local emergency responders such as fire departments and ambulance companies. Ultimately, they will create a set of recommendations to bring cohesion to the various response plans.

As to the impact on the community and those involved in the process, a member of the LEPC and community participant with CEREG summed it up best: "There was a lot of pride in recognizing that we were doing something that is not commonly done in all areas . . . that our model could be used by other people to improve emergency response in their own areas and management of chemicals and interaction with communities. Locally, we recognized that we were able to work together and could be very effective at doing it, and really enjoyed it once we got into it."[23]

TABLE 1

Chemical Plants and Chemical Compounds in Kanawha Valley Worst Case Scenarios

Plant		Chemical Compounds	
FMC, Nitro	Chlorine	Phosphorous Trichloride	Phosphorous Oxychloride
Monsanto, Nitro	Chlorine	Anhydrous Ammonia	Hydrogen Sulfide
FMC, Institute	Methylene Chloride		
Rhone-Poulenc	Methyl Isocyanate	Chlorine	Phosgene
Union Carbide, Institute	Butadiene	Ethylene Oxide	
Arco Chemical, Institute	Propylene Oxide		
Olin, South Charleston	Chlorine		
FMC, Spring Hill	Liquid Hydrogen		
Union Carbide, South Charleston	Monomethylamine	Sulfur Trioxide	
Arco Chemical, South Charleston	Propylene Oxide	Vinylidene Chloride	Acrylonitile
Union Carbide Tech Center, South Charleston	Dimethylamine		
Arco Tech Center, South Charleston	Methylene Chloride		
DuPont, Belle	Anhydrous Ammonia	Butyl Isocyanate	Dimethylamine
Occidental Chemical, Belle	Chlorine	Methyl Chloride	Hydrogen Chloride

Source: Charleston Daily Mail, June 3, 1994

Appendix I

Guiding Principles of Responsible Care®

CMA Member companies are committed to support a continuing effort to improve the industry's responsible management of chemicals. They pledge to manage their business according to these principles:

- To recognize and respond to community concerns about chemicals and our operations.
- To develop and produce chemicals that can be manufactured, transported, used and disposed of safely.
- To make health, safety and environment considerations a priority in our planning for all existing and new products and processes.
- To report promptly to officials, employees, customers and the public, information on chemical-related health or environmental hazards and to recommend protective measures.
- To counsel customers on the safe use, transportation and disposal of chemical products.
- To operate our plants and facilities in a manner that protects the environment and the health and safety of our employees and the public.
- To extend knowledge by conducting or supporting research on the health, safety and environmental effects of our products, processes and waste materials.
- To work with others to resolve problems created by past handling and disposal of hazardous substances.
- To participate with government and others in creating responsible laws, regulations and standards to safeguard the community, workplace and environment.
- To promote the principles and practices of Responsible Care® by sharing experiences and offering assistance to others who produce, handle, use, transport or dispose of chemicals.

Notes

1. Wood, Andrew. 1994. 10 Years after Bhopal, *Chemical Week* 155, December 7: pp. 25–30.

2. Begley, Ronald. 1994. After Bhopal: A CMA 'War Room,' New Programs, and Changed Habits, *Chemical Week* 155, December 7: 32–34.

3. Stadelman, Chris. 1994. Close Call Threw Activist into Fray, *Charleston Daily Mail*, June 2.

4. Leaks above a certain level must be reported to the government. For instance, a release of 100 pounds or more of andydrous ammonia must be reported, whereas a release of 10 pounds or more of methyl isocyanate must be reported.. For a summary of the accidents reported at Kanawha Valley chemical plants from 1989–93, see Chemical Plants List Leaks During the Last Five Years, *Charleston Gazette,* June 3, 1994.

5. Ward, Ken, Jr. 1994. 'Worst Case' Release is Just the Beginning, *The Charleston Gazette,* June 6.

6. Rayport, Jeffrey F. and George C. Lodge. 1991. "Responsible Care," Harvard Business School Case N9-391-135.

7. Begley, *ibid.,* 32.

8. Rayport and Lodge, *ibid.,* 7.

9. The Canadian Chemical Producers' Association. 1992. Codes of Practice Commitment Package, Ottawa, Ontario.

10. Responsible Care® also has a "Phase II" Implementation plan that deals with various issues such as management systems verification and mutual assistance among CMA companies.

11. Chemical Manufacturers Association.[ ] Community Awareness and Emergency Response Code of Management Practices, Responsible Care®.

12. Chemical Manufacturers Association [ ] Process Safety Code of Management Practices, Responsible Care®.

13. Speech by Charles Aldag at Miami University, Oxford, Ohio, October 27, 1994.

14. Interview with Richard K. Knowles, February 10, 1995.

15. Correspondence with Richard M. Doyle, June 22, 1995.

16. Interview with Richard K. Knowles, February 10, 1995.

17. Ollis, Robin. 1994. *Managing Our Risk Together: The Kanawha Valley Worst Case Scenario Project.*

18. Interview with Pam Nixon, April 14, 1995.

19. Interview with Richard K. Knowles, February 10, 1995.

20. Interview with Richard K. Knowles, March 7, 1995.

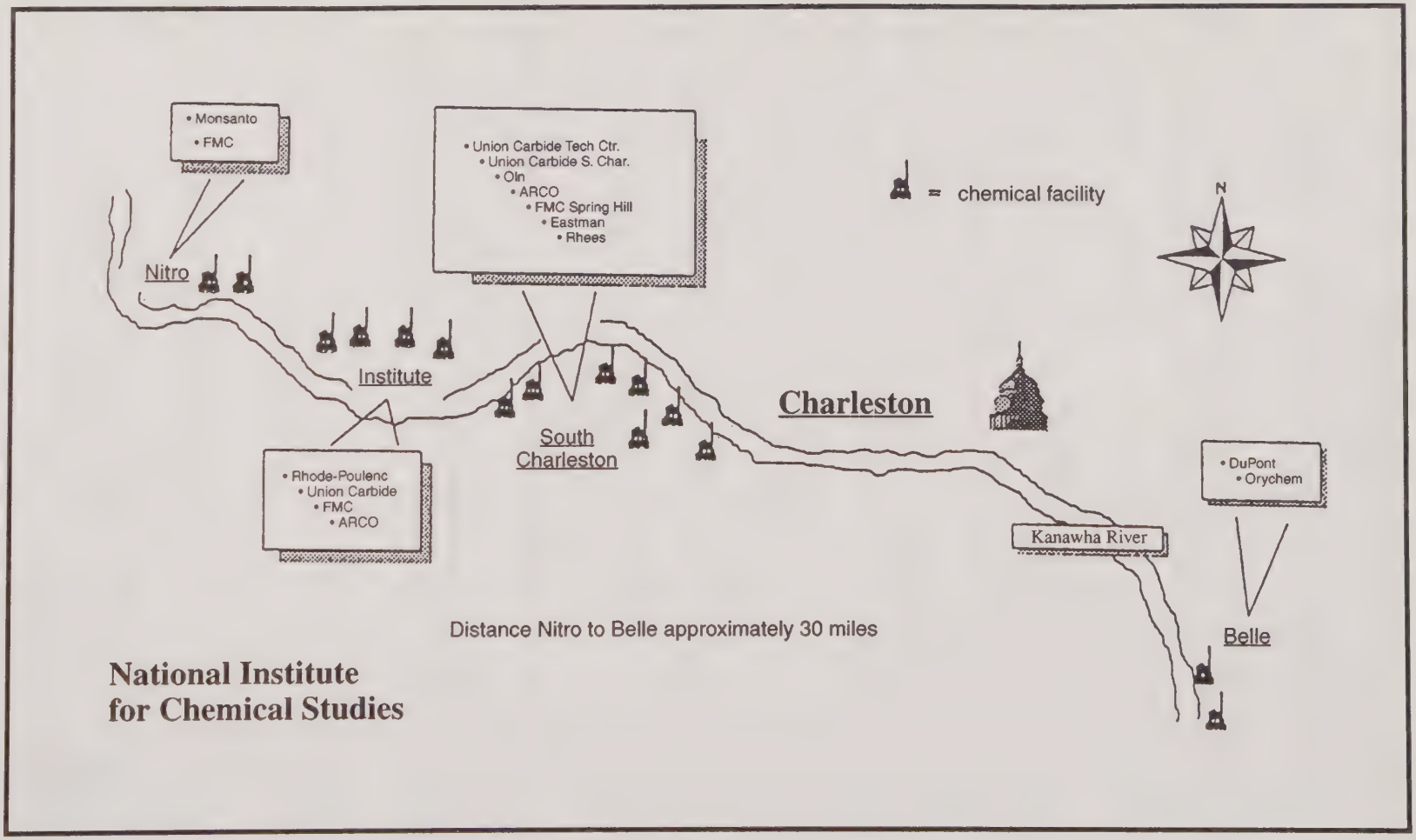
20. Interview with Richard K. Knowles, March 7, 1995.

21. JBF Associates, Inc., "KB Hazard Assessment Project: Third-Party Results," June 3–4, 1994.

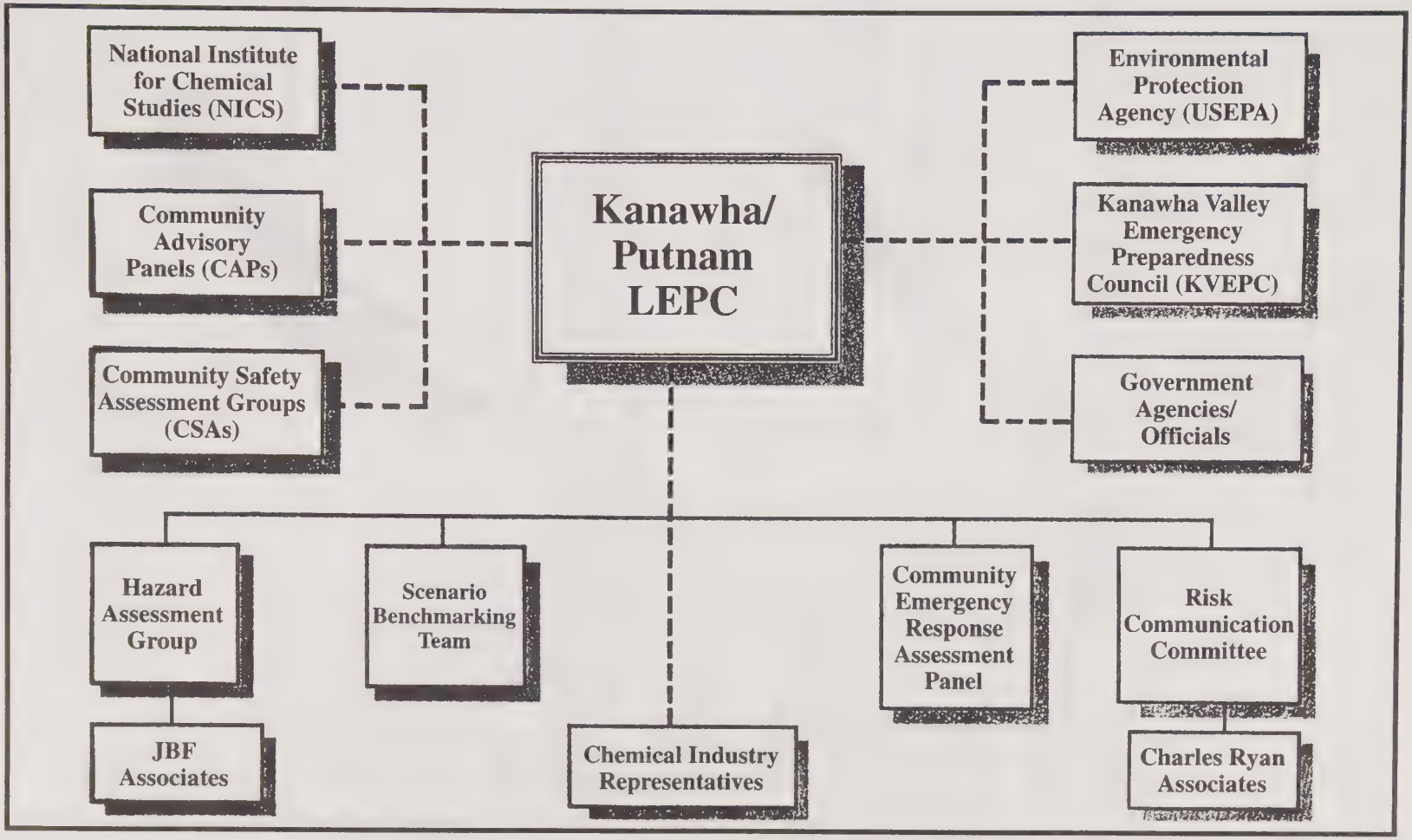
22. Interview with Richard K. Knowles, March 7, 1995.

23. Interview with Lillian Morris, July 26, 1995.

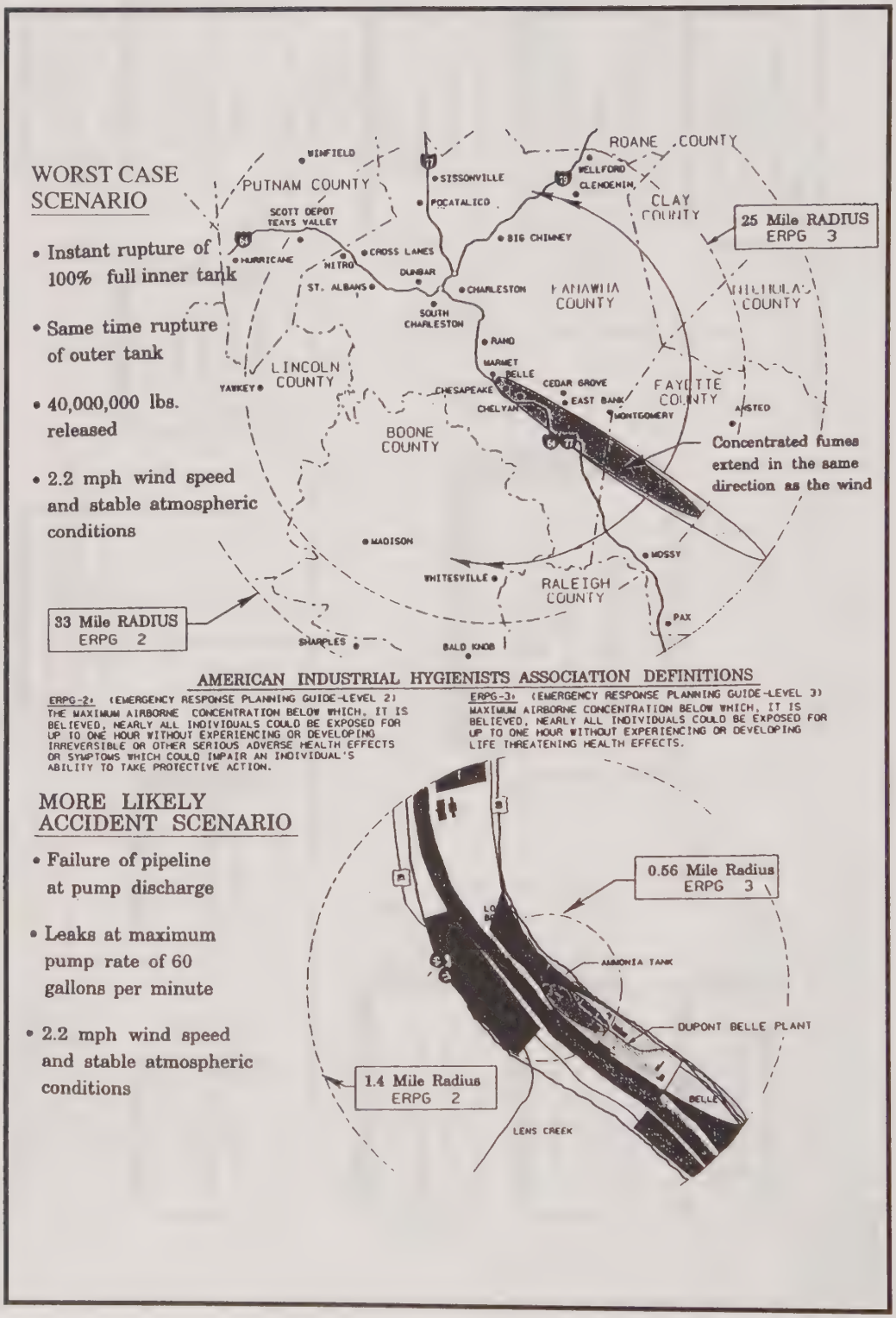
Attachment 1
Chemical Facilities in the Kanawha Valley of West Virginia



Attachment 2
Kanawha Valley Hazards Assessment Project



Attachment 3



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A Breath of Justice

Steven Keeva

Along with equal employment opportunity and voting, living free from pollution is emerging as a new civil right

For decades now, the environmental and civil rights movements have run on separate tracks. Environmentalists focused on protecting land, air and water; civil rights advocates concentrated on securing rights for people.

Today a bridge connecting the two is under construction. Called the environmental justice movement, its aim is to find remedies for a problem that has become clear in its glaring inequity: minority and poor communities bear a disproportionate burden of the nation's environmental hazards.

This isn't new. The poor have always lived downwind and downstream from what the privileged could afford to avoid. What *is* new is the extent to which the problem is being documented—by social scientists; civil rights, environmental and political activists; journalists; and government agencies.

And with this documentation, something else has happened for the first time—government and industry are taking notice and lawyers have begun in earnest to seek remedies for the affected communities.

It isn't easy. First, there are theoretical hurdles to get over: If minority communities have become society's dumping grounds, what kinds of legal solutions are available and from where should they come—environmental law or civil rights law? Can environmental and civil rights lawyers work together? Is litigation the best strategy, or will other measures succeed?

These and other questions need to be answered soon if lawyers are going to make a meaningful contribution to a movement that is rapidly gaining momentum.

Currently, at least nine bills before Congress—including the Environmental Justice Act and a bill to elevate the Environmental Protection Agency to Cabinet level—contain environmental justice-related provisions. President Clinton, in an Earth Day speech last April, called environmental justice an important domestic priority.

More recently, he asked the EPA Office of Civil Rights to determine whether two southern states are violating the civil rights of African-Americans by permitting industrial pollution in their neighborhoods. During January, Clinton was expected to sign a long-heralded executive order that would prohibit discrimination in federal environmental programs.

At the EPA, administrator Carol Browner has expressed a willingness to consider possible disproportionate impacts on communities in environmental policy-making and to expand the role of the EPA's Office of Environmental Equity.

Industry groups—most notably the National Association of Manufacturers—have formed task forces and working groups to explore environmental justice issues. Last October, in a telling indication of concern, *Chemical Week* magazine ran a cover story entitled "The Demand for Environmental Justice: Industry Faces a Nationwide Campaign." Clearly, it has become a campaign that industry believes it cannot afford to ignore.

While none of this guarantees significant change for poor or minority communities living perilously close to hazardous waste landfills, sewer treatment facilities, smelters, oil refineries and toxic waste incinerators, most of those involved in the movement see it as a promising start.

Robert Bullard, an urban sociologist at the University of California at Riverside who is considered one of the founders of the movement, says that currently there is "a window of opportunity" for environmental justice reforms.

"But the window wasn't opened voluntarily," he says. "It was kicked open by organizations of color, environmental justice groups, civil rights groups and environmental groups that have now become enlightened. Still, while the window is open, and while there is an administration that at least will sit down and listen, I think we need to take advantage of that."

The roots of the environmental justice movement predate the research and analysis that have shown environmental inequity to be a nationwide problem. For the past two decades grassroots organizations have worked at the local level on issues that had an environmental justice dimension—even if they weren't recognized as such.

Richard Moore, coordinator of the Southwest Network for Environmental and Economic Justice, a coalition of over 50 grassroots organizations based in Albuquerque, N.M., said that because mainstream environmental groups defined the term "environmental" quite narrowly, grassroots activists often missed the larger picture of which their work was a part.

"Our organization was founded in 1990, when we pulled together 100 activists from eight states for a meeting in Albuquerque on environmental and economic justice issues," he says. "Most of them weren't interested in coming at first because they didn't think they were working on environmental issues."

Instead, they saw their struggles in such terms as tenants' rights or labor rights. "We'd ask them, 'Have you been working on problems of children eating lead-based paint?' And they would say, 'Of course.' Well, that's a tenants'

rights issue, but it's also an environmental issue that overwhelmingly affects minorities," Moore says.

"Or we'd ask, 'Have you been working on pesticide issues?' And they'd say, 'Of course we have.' Well, that's a labor rights issue, but it's also an environmental issue that overwhelmingly affects people of color. So it was really a problem of conceptualizing what was going on."

Coalitions similar to the Southwest Network now operate throughout the nation. According to Moore, the networks help not only in a practical way by facilitating the exchange of information and strategies, they also show people that they are not alone in their struggles. "Finding out that others are facing the same kind of problems you're facing can be very empowering," he says.

But these networks, with their potential for bringing community problems to light on the national level, may never have coalesced without the pioneering work of researchers whose demographic studies put teeth into widespread claims of unfair treatment.

Perhaps the best known and most influential study was the first comprehensive national report to look at demographic patterns associated with environmental hazards. It was commissioned by the United Church of Christ Commission for Racial Justice, which was then headed by the Rev. Benjamin Chavis, and appeared in 1987. The study found that the racial composition of a community—more than socioeconomic status—was the most significant determinant of whether or not a commercial hazardous waste facility would be located there.

In describing the study's findings, Chavis coined the term "environmental racism," clarifying for many what was troubling them and prompting others to object vehemently, saying there was no evidence that minorities had been intentionally targeted for such treatment.

But Bullard of U.C. Riverside says that getting caught up in the term "racism" is counterproductive. "When I use the term 'environmental racism' I'm not talking about whether a community is overburdened with environmental hazards intentionally or not—the result is the same. If you argue about intent, you'll never get anywhere."

Today, the large, national environmental organizations are increasingly turning their attention to environmental justice. Most of the groups have staff members assigned to the issue, and one, the Sierra Club Legal Defense Fund, has opened an office in Louisiana's so-called Cancer Corridor—the refinery-filled stretch of the Mississippi River between New Orleans and Baton Rouge—to help nearby communities that are affected.

Hope Babcock, a former general counsel of the National Audubon Society who now teaches environmental justice at Georgetown University Law Center, says organizations that neglect the issue risk irrelevance. "People are getting involved in this for moral reasons and outrage reasons, and also because this is a growth area," she says.

But as recently as 1990, very few mainstream environmentalists had ever considered the distributional effects of either environmental degradation or

protection. That was true for Richard Lazarus, a longtime environmental lawyer and currently a professor of environmental law at Washington University School of Law in St. Louis. "I've been thinking about environmental law since I graduated from high school," he says. "I use myself as a good Nielsen measure of the traditional environmental lawyer."

For Lazarus, enlightenment came from a student. "It was in a class on federal hazardous waste management regulation, and this student asked it he could do a paper on potential discrimination in the siting of hazardous waste facilities. That was the first time I'd heard of the issue."

Lazarus said he felt resistant to it at first, particularly to the implication that environmentalists had overlooked or tacitly allowed discrimination. "But as soon as I spent more than half an hour thinking about it, it became quite eye-opening," he says. "If you look at the issue, there's enough obvious stuff—the fact that poor and minority communities lack political and economic clout, that they're generally left out of the regulatory and lawmaking process and so on—that it makes it highly unlikely that the burdens are *not* distributed in an inequitable way."

As time went on, Lazarus said, he saw the need for a strong alliance between the environmental and the civil rights communities. Lazarus claims that "the environmental movement of the 1970s finds much of its structural roots and moral inspiration in the civil rights movement that preceded it," and returning to that original connection can be strengthening. Also, he adds, civil rights discourse can be a good source for ideas and inspiration for environmental protection law.

If current civil rights discourse suggests a new theme for the 1990s, it is probably that people have a right to a clean environment, just as they have a right to vote and to fair and equal housing. The power of this idea, and the fact that its time has apparently come, became evident last year when Chavis—the godfather of the environmental justice movement—was appointed executive director of the nation's largest civil rights organization—the National Association for the Advancement of Colored People (NAACP).

When the ABA held its first environmental justice program in May 1992, environmental, civil rights and legal services lawyers met to look at how they could work together to help communities in crisis. "I thought we were going to have bloodshed the first day," Georgetown's Babcock recalls. "Mostly, the civil rights bar was screaming at the white environmental bar, saying, 'Where have you been? We've been doing this work since Martin Luther King came down to Memphis to march for the striking garbage workers.'

"Then the environmental bar, being touchy-feely '60s-types, were saying, 'Oh, please don't say that; we're not racist, we're not bigoted, we really want to work with you, but you've got to understand that this is a complicated field and we really understand it.' By the end of the conference, we had all of these people working together, coming up with a list of initiatives where the three bars could work in harmony."

Since that conference, other meetings have promoted cross-fertilization of ideas and strategies. To Barry E. Hill, a member of the ABA's Standing Committee on Environmental Law and principal author of an ABA resolution on environmental justice, such sharing is essential.

"Environmental lawyers," he says, "are not conversant in civil rights approaches to litigation—class-action law suits, a private right of action as the result of disparate treatment—things that could be used effectively under these circumstances because we're talking about whole communities that have been adversely affected.

"On the other hand, civil rights lawyers are not very familiar with environmental law—with the terminology and the approach and with looking at environmental degradation depending on the medium. There are so many things that need to be learned on both sides," Hill says.

Clearly, achieving environmental equity for poor and minority communities will require a multidisciplinary approach. Alice Brown of the NAACP Legal Defense Fund says that not only must lawyers look to environmental and civil rights statutes as possible sources of relief, but they should also arm themselves with other tools. "These can include public education, community organizing and legislative activities, litigation, civil disobedience—all these things can have an impact," she says.

As a practical matter, Brown and others say, it may be effective to join forces to provide legal services for minority communities, the way the Legal Defense Fund did with an environmental law firm and a legal services office in a 1989 case, *Houston v. City of Cocoa* (No. 89–92–CIVORL–19 (M.D. Fla.)). That case addressed redevelopment plans for the Florida city of Cocoa that would have had the effect of eliminating a historically black neighborhood. The plaintiffs alleged that the plan was part of a continuing pattern of racially discriminatory zoning, planning and redevelopment activities.

Their claims were based on a variety of legal provisions, including Title VI of the 1964 Civil Rights Act, the 13th and 14th Amendments, the National Environmental Policy Act, the National Historic Preservation Act, Florida redevelopment statutes and local zoning ordinances. Ultimately, the court applied the claims broadly and found the allegations sufficient to support requests for punitive damages. Following this ruling, the plaintiffs reached a favorable settlement with the city.

Although *City of Cocoa* was not the first case in which both environmental and civil rights claims were used, it is an early example, and it represents the kind of approach that many movement lawyers find promising. "I would like to encourage environmental lawyers to consider civil rights claims and civil rights lawyers to consider environmental claims," says Bill Lann Lee of the Legal Defense Fund's Los Angeles office.

Deeohn Ferris, program director of the Environmental Justice Project of the Lawyers' Committee for Civil Rights Under Law in Washington, D.C., agrees wholeheartedly with the notion that there is no legal silver bullet that will eliminate all problems associated with disproportionate environmental impact.

"I try to get people to understand that no one statute, no one regulation, no one lawsuit, no one judicial ruling is going to solve the panoply of prob-

lems that we're dealing with," she says. "These environmental problems are the same problems that white people are dealing with; we're just dealing with them in a more concentrated way. And it becomes frustrating to me when you hear people talk as though our problems can be solved by one regulation or one statute."

A major topic of discussion among environmental justice activists—be they grassroots organizers, academics or lawyers—focuses on the kind of relationships lawyers ought to have with client communities.

One of the best-known and most influential participants in that discussion is Luke Cole, counsel for the Center on Race, Poverty and the Environment at the California Rural Legal Assistance Foundation in San Francisco. Cole says the movement requires that "lawyers play second fiddle to community organizations."

Cole first demonstrated what he means by that in a 1989 case in which he represented a group called *El Pueblo para el Aire y Agua Limpio* (People for Clean Air and Water), a group of residents of Kettleman City, Calif., who had organized to fight development of a toxic waste incinerator adjacent to a huge toxic waste dump. His clients in the 95 percent Latino community were mostly farm workers, 40 percent of whom spoke only Spanish.

Forgoing what he calls the "top-down" approach, Cole tried what he calls a new environmental poverty law approach. "In the top-down mode," he says, "I would have taken the environmental impact report, shared it with some experts, and written comments on behalf of the community and so on. That would teach people that they don't have the ability to deal with their own problems."

Instead, he had meetings at which community leaders explained the incinerator proposal to residents and answered their questions. Residents were then asked to write their own letters of comment on the impact report to the planning commission. The letters questioned the commission about the incinerator and requested that the impact report be translated into Spanish so that all Kettleman City residents could take part in the licensing process.

This approach accomplished a number of things, says Cole. By bringing residents together, informing them of upcoming opportunities to participate, and allowing them to act as "experts" in their own case, a sense of ownership in the campaign to stop the incinerator was fostered.

When the county board of supervisors approved the incinerator, Cole sued. The court overturned the approval partly because the county's failure to provide a Spanish translation of the impact report excluded Spanish speakers from full participation in the process. Recently, the proposal to build the incinerator was withdrawn.

"What Luke won in that case was the translation of the documents into Spanish," says Babcock. "That was a brilliant lawsuit to bring. Brilliant. I never would have thought of that in a million years. I would have been tilting away at that facility."

Although Cole is a leading practitioner and theoretician of the community empowerment model, many other lawyers in the movement claim also to embrace a community-centered approach to lawyering. Brown, of the NAACP Legal Defense Fund, for example, stresses that "we take our marching orders from communities or from the individuals within the communities that we represent. We don't call the shots."

Frances Dubrowski, chair of the Health and Environmental Rights Committee of the ABA's Section of Individual Rights and Responsibilities, says that the environmental justice movement offers an opportunity and a challenge to the bar. "What we're really talking about here is the way we operate as lawyers," she says. "We must seek to find solutions that strengthen communities rather than take the solutions out of their hands."

The movement offers opportunity and challenge to industry as well. "I'm on a mad industry junket," says Ferris of the Lawyers' Committee. "If I was not employed, I could probably be fully employed by just talking to industry for awhile.

"What has propelled this interest is the fact that folks in the movement have been raising hell sufficient to catch the attention of the administration and Congress. That's what's done it. When the administration starts talking environmental justice and Congress starts introducing bills, then it's serious."

Jacqueline Sincore, counsel for the Chemical Manufacturers Association, says that the chemical industry and industry as a whole are wide awake to environmental justice issues and concerns. "It's a high priority for us because many of the communities that are concerned about this host our facilities," she says.

Sincore is a member of the National Association of Manufacturers' Environmental Equity Task Force, a group formed to "try to position ourselves best to address what's going on," she says. "And we've learned a lot about it from equity activists, who have explained to us what their goals are."

She says that industry groups also are looking at how to improve legislation from their perspectives. Industry has traditionally provided input to the legislative process, offering data, expertise and, when needed, pressure to move things along in a desired direction.

What is new, though, is that on issues of environment justice, people who have until now been without a voice in the lawmaking and policy-making processes are starting to be heard at the local, state and federal levels.

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The Mainstream Environmental Movement

John H. Adams

Predominately White Memberships Are Not Defensible

The statistics are plentiful and they are frightening. Three out of four toxic waste dumps are sited in predominantly African American or Latino communities. Two million tons of radioactive uranium tailings have been dumped on Native American lands. Three hundred thousand Latino farm laborers suffer from pesticide-related illnesses. This is a national disgrace.

Statistics like these reflect a nationwide pattern of disproportionate environmental impact on people of color and the poor. This pattern stems from a profound flaw in the structure of the U.S. economy: Polluters do not absorb the costs of the environmental degradation they create, and society as a whole does not confront the problems and solve them. Instead, the problems are displaced. It is easier for a company to locate its factory or waste facility in eastern St. Louis than in the Upper East Side of Manhattan; it is cheaper for state governments to disregard the lead poisoning of poor children than to test and treat them as federal law requires. What this means is that we are building our economy on the backs of people of color and the poor.

Not to recognize this syndrome is to ignore one of the driving forces of environmental degradation in this country. The fact of disproportionate impact demands a disproportionate effort. Federal and state governments must direct a disproportionate share of clean-up funds and other environmental funding to these communities. The national environmental organizations must devote a disproportionate share of their resources to the public health problems affecting them.

But this alone is not enough. The environmental justice movement that has arisen to address the concerns of these communities is one of the strongest new forces for environmental reform to emerge in years. If we are to remain truly effective, the national environmental groups must strive to become allies of this movement and of the communities it represents.

This alliance will not take place overnight. It will require a great deal of work on the part of the national groups. We have been criticized by environmental justice activists, and there is much to criticize—the predominantly white staffs, the cultural barriers that have damaged and impeded joint efforts with activists of color. The history is well documented: The mainstream environmental movement grew out of a white, middle-class effort to preserve the world's natural wonders. It is still true that the staffs of the major national organizations are disproportionately white and middle class, and it is not defensible.

Environmental justice activists have also criticized the priorities of the mainstream environmental movement. The movement began with wilderness conservation, and there is no question that, in its early life, its work and vision only rarely encompassed the protection of human beings. But there is also no question that this is a movement that has matured far beyond its origins. I speak for NRDC, and I know I speak for many others, when I say that for mainstream environmentalists today the two critical issues—environmental violation of the Earth and environmental violation of its human inhabitants—are inextricably intertwined.

The record speaks for itself. It is a record of commitment to clean air, clean water, land that is safe to live on and work on. These are not abstract values or values limited to national parks and wildlife preserves. They are values that have led NRDC to dedicate the bulk of our resources to the very public health problems that impact communities of color disproportionately.

For two decades, we have been working to clean up the smog that concentrates in the inner city and that can cause long-term lung damage. We have been striving to end toxic pollution of drinking water supplies. Our efforts helped lead to the phaseout of leaded gasoline, which was poisoning the air in inner cities and the children who breathed it, and we are still fighting to end lead poisoning from every source. We are striving to end unsafe incinerations and landfilling, which can contaminate the water people drink, the land their homes are built on, and the air they breathe. We are working to reduce pesticide use and eliminate the most toxic pesticides, so that people can eat safe food and farmworkers will not be poisoned.

This is not to say that there is no room for improvement. The point is that the two movements are not so far apart as to be irreconcilable. The possibility for partnership exists, and not only in the arena of public health, but also in that of conserving natural resources. Many of the ethnic cultures of this country have deep and longstanding traditions of reverence for the natural world and an abhorrence of the exploitative practices that the mainstream environmental groups are fighting.

And such partnerships can be enormously effective. The environmental justice movement has vital site-specific information, tremendous organizing ability, and expertise on questions of social justice. The national environmental groups have substantial technical, legal, and lobbying experience in environmental advocacy. The combination of these complementary skills can create a powerful synergy.

Some recent examples from NRDC's experience: Joint efforts with the Mothers of East Los Angeles and Concerned Citizens of South Central Los Angeles effected the cancellation of plans to build California's first large-scale toxic waste incinerator in a low-income, primarily Hispanic community. Our work with West Harlem Environmental Action regarding foul odors emitted by a nearby sewage plant has helped build press attention to the problem, and we expect soon to file a lawsuit.

With the Cree nation of northern Quebec and with other organizations, we are beginning to articulate to the public and decision makers that the James Bay II hydroelectric project, which would flood an area in Quebec the size of Vermont, is unnecessary and vastly more expensive than the energy-efficiency alternatives. With People United for a Better Oakland, the NAACP Legal Defense Fund, the ACLU, and the National Health Law Program, we won a commitment from the state of California to establish a state-of-the-art mandatory lead testing program for poor children.

All of us in the national environmental groups need to broaden and deepen our alliances with the environmental justice movement. To accomplish this, we must do two things. First, we must diversify our staffs to better reflect the heterogeneity of environmentalism in its totality, and of humankind itself. The fact of disproportionate impact means that different communities experience the environment in different ways—and therefore have differing insights and objectives. To the degree that our staffs are limited in their economic, cultural, and ethnic origin, the perspectives they bring to their environmentalism will also be limited. Our work is the poorer for it.

Second—but by no means second in priority—the national groups must listen to the environmental justice activists and engage them as partners. Their priorities and perspectives must be among the factors shaping our agenda. The issues of racism, poverty, and environmental degradation are intertwined, and we cannot solve one without addressing the others. What this means is that the mainstream environmental movement must learn from those who have experience in social justice issues where we are novices. Moreover, we must come to recognize and respect the traditions of reverence for the Earth that so many communities of color have fostered, and learn from them to enrich our own perspective. And we must support the continuing growth of the environmental justice movement by sharing our resources in technical analysis, legal work, lobbying strength, and fund-raising capability.

And so our most urgent need is for dialogue. It is critical that the national environmental groups listen to people of color on their own terms. Correspondingly, my plea to the environmental justice movement itself is for continued communication and participation in this dialogue. We stand ready to work with you. We have made mistakes and no doubt we will continue to make them, but we are willing to learn and trying to change. If our two movements can join forces effectively on our common issues, we will be a formidable force for genuine and lasting protection of the human environment.

Adams is Executive Director of the Natural Resources Defense Council, headquartered in New York City.

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Have Minorities Benefited . . . ? A Forum

Some observers argue that the environmental movement in the United States has not only failed to include the participation of people of color but also has failed to provide them with an equitable share of its benefits. Others maintain that the laws enacted in the wake of Earth Day 1970 are colorblind, that the efforts to clean up the air and clean up the water have benefitted everyone equally. EPA Journal asked a number of individuals to respond to the following question: Have minorities benefited equitably from the gains made by the environmental movement? Their answers follow.

Michel Gelobter

The answer is clearly no. There are at least three ways to measure the benefits of the environmental movement to people of color: socially, economically, and environmentally.

- The social aspects of the environmental movement have, almost without exception, systematically excluded people of color. People of color are underrepresented at managerial and decision-making levels of both governmental and nongovernmental environmental organizations, including my own. Academic "feeder" programs in environmental science and policy fail to recruit and retain people of color, and environmental organizations fail to hire those who do pursue such studies (primarily Chinese- and Japanese-Americans). Finally, the jobs and contracts generated by environmental activity have fallen primarily to white workers and contractors.
- The economic effects of environmental policy are almost always regressive (in that they fall more heavily on low-income groups than on people in middle- and high-income brackets). The lack of attention to the distributive consequences of environmental policy also disproportionately impacts people of color.

- Finally, the existing evidence points to great disparities in the incidence of environmental quality. People of color have radically less access to this country's natural areas, and, in our urban environments, face greater pollution. Most disturbing is the evidence that government regulation *exacerbates* rather than reduces these inequities. In both my own research on air pollution and the Commission for Racial Justice's work on toxic waste sites, regulatory activity—in its efforts to control and improve the environment—seemed to shift the remaining burden of pollution more heavily on the backs of communities of color.

People of color are a majority on the globe we all want to save. The environmental movement must radically retool its approach to understand, to share, and to address all our needs.

(Gelobter is Assistant Commissioner of Environmental Quality for the Department of Environmental Protection of New York City.)

Michael Fischer

It is an incontestible fact that people of color, and the poor of America have borne the brunt of suffering from polluting industries and other undesirable development. Whether intended or not (and too often it has been intended), economic growth and land use decisions have been based on environmental racism. Civil rights have been violated; the quality of human life in urban communities has been degraded; adjacent communities and downstream ecosystems have been egregiously damaged.

We at the Sierra Club do know how to make a difference at the local, state, and national levels. For 100 years, the Sierra Club has honed citizen action skills to pressure polluters, elected officials, and government agencies to pass and enforce environmental protection laws. The time, though, for patience, compromise, and "balance" is long gone.

Thousands of community-based grass-roots organizations, led by people of color, have been established in recent years. They possess a deep and righteous anger not seen since the beginning of the civil rights movement. It is a just passion which now must drive the Sierra Club and other organizations of the established environmental movement. Our mission has been broadened, and we have been pushed to new heights of commitment and effectiveness in order to meet the challenges of environmental injustice.

The environmental movement of the 1990s will be multicultural. It will continue to revere and protect natural and scenic beauties of the Earth. And it will be driven by a quest for environmental justice, or it will become irrelevant. We at the Sierra Club are committed to beginning our second century with increased, not decreased, relevance for *all* the people of this nation.

(Fischer is Executive Director of the Sierra Club.)

Juana Beatriz Gutiérrez

No, minorities in East Los Angeles have not benefited from the environmental movement. Although the Mothers of East Los Angeles participated in the 20th anniversary of Earth Day, our own environmental movement is just beginning. The amount of environmental abuse suffered by residents of our barrios is just too great. And the abuse continues. High lead levels and high concentrations of carbon monoxide are directly attributed to those freeways so enthusiastically built for "progress."

Virtually every family in Los Angeles can claim a tragedy of one form or another. Asthma, leukemia, lingering coughs, and more serious illnesses are now believed to be a direct result of our environment, even though the government will not admit to it. Closer to home, three young women experienced miscarriages in the last two years—one of them my daughter, another my daughter-in-law. And the uncle of my daughter-in-law succumbed to a brain tumor—his residence was directly next to a "Superfund" toxic clean-up site.

Only recently have we begun to educate ourselves about the horrors of environmental racism. With recent assistance from environmental groups such as Greenpeace and other "traditional" pro-active organizations, we have begun a crash course on environmental impact statements, risk assessments, public hearings, etc. This knowledge has helped us the last few years and will be invaluable as we try to right the wrongs of the past. The fact that this commentary is written in English and not Spanish is an indication of the exclusive nature of the environmental movement, but we are striving to change that.

(Gutiérrez is President of the Santa Isabel Chapter of the Mothers of East Los Angeles.)

Gail Small

Since 1492, little has changed in terms of the non-Indian's concept of the environment. What they have failed to learn over 500 years is that there is a profound spiritual dimension to the environment. Religion, culture, spirituality, environment are one and the same to Indian people.

Existing environmental laws are not being implemented to protect the sacred places of Indian tribes. Indeed, we often find ourselves fighting environmentalists to protect our ancestral lands and treaty rights. In order to protect our sacred places, we are now asking Congress to amend the Indian Religious Freedom Act, and the environmental movement should be fighting this battle with us.

My home, the Northern Cheyenne Indian Reservation, is being surrounded by this country's largest coal strip mine. The Cheyenne people have had to forego basic services, such as schools and roads, because our few dollars have been used to fight for the environment of southeastern Montana. In 1982, when Secretary of Interior James Watt permitted the largest federal public coal sale in the history of America, where were the big 10 environmental groups? Perhaps it was because only a few thousand Cheyenne Indians lived in this area that none of the "big 10" challenged this giveaway of public coal.

White ranchers who proclaim themselves environmentalists sit on the same bank board that refuses to provide Cheyennes with loans for economic alternatives to the strip mining of our lands. These white environmentalists want Cheyenne water and land to expand their ranches. And the coal companies—they just want our coal.

And where is our federal trustee, the EPA? It's still trying to figure out whether Indian tribes have the jurisdiction to protect their homelands. That's like asking the Cheyenne who won the Custer Battle. Such it is in Cheyenne Country in 1992.

(Small is the Director of Native Action, a nonprofit organization to benefit the Northern Cheyenne.)

Alex Varela

My answer to this question is the same now as it was in the May 1988 issue of *EPA Journal*, when several EPA employees wrote a letter to the Editor identifying major inequities in EPA policies. With the advent of a major national summit conference in Washington in October 1991 on environmental equity (which EPA declined to attend) and a House hearing by Henry Waxman, the question is now beyond my opinion, or any other, in the *Journal*.

This issue is now at a juncture where it will become a moral issue for the Agency if EPA declines to acknowledge the problem, change inequitable policies and priorities, and implement appropriate action. If EPA decides merely to pursue attempts to co-opt legitimate civil rights organizations, offer grants to minority academics, and spin-control the issue, we will continue to end up in an ethical struggle on the wrong end of the scales of environmental justice. I believe our Agency has more sense than this.

(Varela is in EPA's Office of Enforcement Policy.)

Terry Ow-Wing

My first reaction to the question is to pose another: Have minorities shared equitably in any situation where there is a majority and a minority culture? The answer is an obvious no. However, dwelling on the negative is not where the real answer lies. Rather, we must take action to try to make life better for all of us.

From my own story, I decided to contribute my talents to Chinatown, feeling that few outsiders cared about her. In 1976, through a University of California at Berkeley community design course, I interned with the Committee for Better Parks and Recreation in Chinatown. My first contact with Sierra Club was through its support for a new Chinatown park. The Club's participation was not earth-shattering, but it showed a serious commitment to the urban environment in which the minority community lived.

Recently, I became involved with Sierra Club because it has political clout, which I intend to use to benefit Chinatown, and because many Sierra Club members care about the urban environment. Further, I wanted to make important changes within the organization.

The long road of change for Sierra Club is not only in its membership, which is mostly upper-middle class, but in how it handles issues. The environmental movement needs to take into account the needs of the entire population. It must not shirk responsibility for a particular community's environment on the grounds that "they need" the jobs. Although it is true that the movement did not begin with equal concern about "wild" versus urban environments, I am pleased to find that some mainstream environmental groups are now working with communities to eliminate toxins in urban areas. Because the air we breathe is shared equally by all, we must work together to cleanse our Earth for everyone and not waste energy on past inequities. How we respond to this challenge will determine whether we preserve the lifeline of the Earth.

(Ow-Wing, an architect, is co-chair of Sierra Club's Ethnic and Cultural Diversity Task Force and on the Committee for Better Parks and Recreation in San Francisco's Chinatown.)

Senator Daniel K. Inouye

The civil rights movement gave birth to laws intended to grant minorities the same powers, privileges, and protections accorded other Americans. The environmental movement inspired statutes meant to benefit all Americans, regardless of race or income. Despite these progressive laws, inequities remain. A case in point: American Indians lack the power and means to deal with solid waste disposal problems on their own tribal lands.

Like state and local governments across the country, tribal governments are confronted with a mounting crisis in solid waste disposal. In Indian territory, there are currently 650 solid waste disposal sites. Of these, 108 are tribally owned landfills that were constructed before Congress established current standards for landfills under the Resource Conservation and Recovery Act (RCRA): as a result, only two of these 108 are presently in compliance with EPA requirements under RCRA.

Based on a preliminary estimate made in 1990, at least $88 million would be required to upgrade these tribally owned landfills to meet current requirements. In addition, another $45 million would be required to either upgrade or close, as appropriate, other solid waste disposal sites on Indian lands.

A bill is now before Congress to amend RCRA and empower tribal governments to manage solid and hazardous waste on Indian lands. It is important to note that other federal statutes include provisions stipulating that tribal governments should receive the same treatment as states, whereas RCRA currently does not. The proposed amendments to RCRA would not only recognize tribal governments' authority but also make them eligible to receive funds to assist them in developing solid waste management regulations. Such regulations would accomplish several things: provide for the management of waste generated on reservations; authorize the cleanup of open and unauthorized dump sites; and enable the development of regulations governing the operation of commercial solid waste projects on Indian lands.

It is my hope that Congress and the nation will act to rectify this and other environmental inequities in the United States.

(Senator Inouye (D-Hawaii) is Chairman of the Select Committee on Indian Affairs.)

Suzanne Olive

In its issue commemorating the 20th anniversary of Earth Day, *EPA Journal* spoke volumes about the state of affairs in 1970. The only people of color in the entire issue were a lone American Indian and the inhabitants of a Chinese village. Change has come, slowly. While the environmental laws may be colorblind, many of the conditions which gave rise to the disparate impact of environmental problems on minority communities are not. Colorblind solutions will not solve these problems.

The focus of the civil rights enforcement effort, from about 1970 until recently, was on problems of equal access and nondiscriminatory administration of federally assisted programs. Although the term was not in use, the environmental equity issue was nevertheless there. In the wake of much criticism, certain federal agencies began to address, within their areas of jurisdiction, the issue of disparate impacts of federally funded programs on minority communities—e.g., the Department of Transportation and the location and impact of the interstate highway system; the Department of Housing and Urban Development and the location of low-cost and subsidized housing projects.

Until the mid-1980s, EPA's primary concern in terms of civil rights enforcement was the construction grants program and the racial composition of the communities to be served by wastewater treatment systems. The problem of minority communities' exclusion from that program due to geographical or political boundaries was largely eliminated some time ago. However, other problems, affected by a wide range of EPA programs, remain.

As people become more sophisticated about environmental issues, they are also becoming more aware and more critical of the disparities in the benefits of environmental programs. As a result, EPA is now looking at the environmental equity issue and the impact of environmental programs from a broad policy perspective. EPA's Office of Civil Rights has a role to play in exploring ways to use the crosscutting civil rights statutes to address the inequitable effects of environmental policies on minority communities and bring about significant change.

(Olive is Acting Director of EPA's Office of Civil Rights.)

Beverly Wright

Just recently, I was asked by the U.S. Commission on Civil Rights to testify at an environmental equity hearing conducted by the Louisiana Advisory Committee to the commission. My charge was to present an overview of social justice issues related to the environment. In Louisiana, I was asked specifically to respond to the question whether hazardous waste storage, disposal, and treatment practices impacted with greater frequency and intensity on minority

communities. The difficulty in answering this question—indeed, the fact that the question was being asked—reflects the relative lack of attention government has given to possible environmental effects on minority communities.

A similar dilemma presents itself when I attempt to answer the question posed for this forum: Have minorities shared equitably in the benefits resulting from the environmental movement? If the answer lies in the present state of affairs for minority communities as to exposure to toxins in the environment, the answer must be a resounding "NO."

As most of us are already aware, the 1983 General Accounting Office report and the 1987 study conducted by the United Church of Christ strongly suggest that minorities (blacks and Hispanics) are disproportionately impacted by the siting of hazardous waste landfills. It does not take an extraordinary intellectual effort to surmise that this pattern may be indicative of patterns for other environmental pollutants. For a very long time, minority and poor communities have been the prime targets for undesirable byproducts of industrial society. These neighborhoods are seen as the paths of least resistance for such things as bridge or highway buy-outs, toxic waste and solid waste landfills, incinerator and chemical plant locations, to name a few. Unlike the middle and upper socioeconomic strata, who possess the resources to effectuate their opposition to the placing of pollutants in their neighborhoods, poor communities have been less likely to forge successful battles of resistance against federal, state, and local agencies and industries who target their communities for the siting of undesirable "but necessary" polluting facilities.

A review of the history of mainstream environmental organizations and their programs fails to produce any significant involvement by them of minority groups or individuals and almost no attention to pollution problems specific to minority populations. Only recently have we seen minority groups and communities embraced (with some difficulty) and allowed to have a voice in areas related to the environment. The results have been that minorities have not shared equitably in the benefits resulting from the environmental movement.

It is now time to forge an Agenda for Action. A highly innovative approach for dealing with equity issues has emerged from a number of minority researchers and scholars independently investigating equity issues. They have proposed the development of a National Agenda on Environmental Equity and the establishment of Environmental Equity Regional Centers to deal with research and policy, community assistance, and education. This would represent a positive step toward the development of a "clean" environment for all, with the ultimate goal being Environmental justice.

(Dr. Wright is an environmental sociologist with the Sociology Department of Wake Forest University, North Carolina.)

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A Plant Manager's Introduction to Environmental Justice

What Is Environmental Justice?

Environmental *justice*, environmental *equity*, environmental *racism*.

All three terms have been used to describe a belief that poor and minority communities suffer greater exposure to environmental pollution than other communities; that these communities often bear a disproportionate share of the burdens and realize few of the benefits of living near industrial facilities; and that historically, these communities have lacked the power or opportunity to participate in decisions affecting them.

Environmental justice is not just an air, land and water issue. A company's total impact on its neighboring communities—ranging from its emissions reduction efforts to its local hiring and purchasing practices to the scope and focus of its contributions to the community—is now being examined by environmental justice advocates, the media and regulatory agencies.

For almost two decades, community and environmental organizations, and church groups have advocated for environmental justice. But what has brought the issue to the forefront is the extent it is being examined by government agencies, scholars, social scientists, environmental, civil rights and political activists, and journalists.

Environmental justice is a movement that has caught the attention of the President, Congress and some state legislators. In February 1994, President Clinton issued an executive order requiring federal agencies "to make environmental justice a part of all they do." By February 1995, all federal agencies were to have environmental justice strategies in place. EPA established an Office of Environmental Justice to ensure that all program areas of EPA address environmental justice concerns. Nine environmental justice bills were introduced in the 103rd Congress. Twenty bills were introduced in 14 states during the 1993–94 legislative sessions. Environmental justice legislation passed in Arkansas, Louisiana, Virginia, Florida, Michigan, Tennessee and Washington.

In addition, numerous environmental justice related complaints have been filed in federal and state courts, as well as with EPA's Office of Civil Rights. These actions range from toxic tort cases to claims under Title VI of the Civil Rights Act of 1964.

Fairness and Empowerment

At the heart of environmental justice is a question of fairness and empowerment.

Environmental justice advocates believe the following and cite them as examples of *un*fairness:

- Many industrial and waste management facilities are in low-income and minority communities, which receive few or no benefits from hosting these facilities.
- Government enforces environmental laws and regulations more slowly in these communities.
- Penalties for environmental violations are lower in these communities; cleanup standards are less protective.

At the same time, community residents believe they have no say in industry and government decisions affecting their lives.

Deeohn Ferris, Director, Washington Office on Environmental Justice, put it this way in congressional testimony; "Too often, populations affected by disproportional pollution are invisible either at federal, state and local levels. Invisibility . . . is attributable to a combination of factors: public policy discussions on environmental issues don't often meaningfully include people of color, tools to measure their risk do not exist, funding for the tools and mechanisms for their advocacy is nascent or nonexistent, and their efforts are often outweighed by comparatively unlimited resources of opposing industry and government."

Issues and Concerns

With the help of the California Rural Legal Assistance, local residents of Kettleman City, California, a predominantly Latino and low-income community, filed suit against Kings County claiming inadequate representation in the siting process for a Chemical Waste Management hazardous waste incinerator. The state court agreed that the county's failure to provide a Spanish translation of its analysis violated the California Environmental Quality Act's public participation requirement. Alleging a "pattern" of siting incinerators in minority communities, the residents also filed suit against Chemical Waste Management in federal court. The company subsequently withdrew its application.

Environmental justice issues vary and include, among others, environmental, social and economic issues. They include Hispanic farm workers handling pesticides, Asian immigrants working with toxic chemicals in Silicon Valley, Native Americans living next to nuclear waste facilities, and African

Americans asserting that their neighborhoods are dumps for the polluting industries other communities don't want.

Issues that advocates say they want addressed:

- The right to meaningful participation in decisions that affect their lives, property and the things their communities value.
- Inclusion in facility decisions that affect them; dialogue with the facility.
- Full compliance by facilities with all laws and regulations.
- Proof that products and processes are safe.
- "Toxics use reduction."
- Quality employment and advancement opportunities; minority representation in management.
- Worker protection. Adherence to regulations may not be enough to show adequate protection.
- More opportunities at facilities for local minority vendors and contractors.
- Compensation for declining property values determined at pre-plant levels adjusted for inflation.
- Total emissions. Your plant may be in compliance, but the load from all sources in the area should be considered when assessing risk and potential health effects.
- Health behaviors and diets of community residents should not be used to downplay community concerns about industry emissions.
- Health studies of employees should not be used to downplay health concerns, while community-wide studies are ignored.
- Lack of relevant health studies—in particular synergistic health effects.

What Is At Stake?

A full year of protests and activity by community groups influenced the Louisiana Department of Environmental Quality's (LDEQ) denial of a permit request by Supplemental Fuels, Inc., to build a hazardous waste blending facility in east Iberville Parish, a rural area with a primarily minority population. The permit was denied based on the lack of an appropriate siting process. The situation attracted media coverage from across the nation, and environmental groups viewed LDEQ's final decision on the permit as a "litmus test" on the environmental justice question. Advocates repeatedly use the situation as a prime example of industry attempting to locate facilities near poor and/or minority areas.

Environmental justice presents an opportunity and a challenge for the facility manager.

The Opportunity. To responsibly address environmental justice concerns, a new model for community relations is needed. The old model that looks to the political power structure and local officials for information about the community needs to be reconsidered. Plants that focus their greatest attention

on their nearest neighbors—including issues of a social and economic nature such as education, health care assistance and hiring—will find these new relationships will engender mutual respect and opportunities for partnership. The net result: increased trust and credibility.

The six Codes of Management Practice under Responsible Care® are tools to help foster plant operations that protect the community's health, safety and environment and to help build an outreach program that is responsive to community concerns.

In particular, the Community Awareness and Emergency Response (CAER) Code defines an outreach process for employees and the community that can assist in establishing this dialogue. The outreach process includes an ongoing assessment of employee and community concerns, employee training and education, outreach activities, ongoing dialogue, a policy of openness and a regular evaluation of the effectiveness of communications efforts.

This dialogue may go beyond health, safety and environmental concerns related to Responsible Care® to include other issues of interest to the community that may be addressed through individual corporate policy.

The Challenge. Ignoring a community's concerns could mean increased inspections, restrictive operating conditions and increased community pressure. It could mean more difficulties for siting, expanding, permitting, or obtaining tax abatements.

How to Begin to Address Environmental Justice

Communities do not necessarily blame all their problems on industry. In many cases, they are asking for help to find a way to grow economically and socially as well as insisting on their right to a safe and healthy environment. They believe plant managers and their facilities are among the leaders who can help them.

Define Your Community

The first step to addressing environmental justice concerns is to know your community. However, people will often disagree about how to define their community. Socio-economic status, cultural and ethnic values and a person's position in the community may affect this definition.

The key to defining your community is to ask a lot of questions and listen well to the answers. Talk with groups you might not have talked to before: fence-line neighbors, local opinion leaders, environmentalists and activists, and elected and appointed officials. Ask your Community Advisory Panel or Local Emergency Planning Committee to suggest groups that may be able to help you define your community. Neighborhood churches and schools are also good places to start.

Determine the boundaries of the community. Do they include those who could be affected by an accidental release? Perhaps it's the people who are

most likely to see, hear or smell a facility's operation. Or perhaps it's the area described by your most likely accident scenario.

Good sources of information on how to define your community are CMA's Community Outreach Manual and the CAER Code Resource Guide. (See ADDITIONAL HELP for ordering information.)

Understand Your Community's Concerns

Learning more about your community is an opportunity to partner with your neighbors toward mutual improvement, rather than be seen as an adversary. You'll find that it doesn't take much listening to learn that your neighbors have very real concerns about health, safety and the environment. They may not be the same things that you think concern the community.

Try to view the situation through your neighbors' eyes. At the same time, be open about environmental justice and other community concerns and how they affect the community *and* you. Be patient and don't take environmental justice charges personally. For example, charges of racism often refer to how institutions that have power interact with communities rather than any incident of blatant racism by any person or group. Your job is to seek common ground whenever possible and truly understand the issues before trying to respond. Some local communities feel they get no direct benefits from the facility—jobs, contracts, training. Understand that many feel you owe something special to those who bear the risks from your operations.

Work with the community to make changes happen. Public opinion research has shown that community members believe you and the company you represent have extraordinary access to those in power and can use that access for the benefit of all in your community.

Dialogue . . . And More

The environmental justice movement has attracted numerous participants—from minority and low-income communities to national environmental, civil rights, and religious groups, from government regulators and public health officials to academics. This diversity of audiences may require companies to adapt their communications to address differences in cultural, social, educational, and economic backgrounds.

You may already have a strong community outreach program. If so, you may only need to make some adjustments. The following hallmarks are commonly found in a good community outreach program.

- Follow the principles of Responsible Care® especially the management practices that promote dialogue and those that address safety, health and environmental issues of concern to the community.
- Listen well and keep commitments. Seek to understand the community's concerns before formulating responses.
- Find and build on common values.
- Focus on the problem, not the critic.

- Talk with your community. Through the CAER process, begin a regular public dialogue. Get to know your neighbors and let them know you. Community Advisory Panels and Local Emergency Planning Committees are ideal organizations with which to begin a dialogue. See CMA's Community Outreach Manual for how to start—and keep it simple at first.
- Avoid being drawn into circular arguments such as who was there first, the industry or the community. Engage in solution-oriented dialogue.
- Work with the community to identify concerns about your operations; promptly address those concerns and strive for win-win solutions.
- Tell people about your emission reductions goals and report your progress.
- Diversify your ties to the community. Increase activities with schools and civic organizations. Build relationships with neighborhood businesses.
- Communicate early and often about plant operations, particularly when you plan for big changes or new projects. Increase your community participation in your activities as much as possible.
- Offer employees opportunities to participate in the community and encourage them to do so.
- Become politically active. Get to know elected and appointed officials especially on the local level and help encourage community members to get involved politically.

Here are some suggestions that will help to ensure that environmental justice is a strong part of your community outreach program.

- Evaluate your outreach program. Does it identify and address environmental justice concerns?
- Remember that environmental justice by and large is a local issue with local solutions.
- Treat all community members with respect and dignity.
- Understand the language barrier. Just because everyone in the room speaks English doesn't mean they understand each other.
- Be sensitive to cultural barriers. You may interpret the lack of an aggressive stand on environmental justice as a lack of interest. But in some cultures, aggressiveness is considered disrespectful.
- Do not define the community too narrowly in geographic terms—water and air emissions may impact many who live beyond local political boundaries.

You may want to review your individual company policies to address other aspects of environmental justice.

- Strengthen local hiring and purchasing policies.
- Increase opportunities for local minority representation in management.

- Work with the community on training and educational needs.
- Offer diversity training at your facility.

CMA Policy on Environmental Justice

Responsible Care® requires members of the chemical industry to recognize and respond to community concerns about chemicals and our operations. There is a growing community concern that poor and minority neighborhoods may be disproportionately affected by pollutants from industrial facilities and abandoned waste sites. CMA's policy and practice, regardless of the racial, ethnic or socio-economic composition of the communities in which we operate, is to advocate:

1. Full compliance with and impartial implementation, monitoring and enforcement of all applicable health, safety and environmental laws and regulations.
2. Public programs and policies that protect the health, safety and environment of all communities.
3. Use of scientifically valid risk assessment methods to evaluate and prioritize health, safety and environmental risks.
4. Continued scientific research into relationships between adverse health effects and exposure to emissions, including any disparities among racial, ethnic or socio-economic groups. CMA believes that public health can be most effectively improved by addressing all relevant factors including access to quality health care and health behaviors. In addition, potential health effects of our products and operations should be assessed, and factored into scientifically supportable recommendations to improve public health.
5. Public education about the relevance of risk assessment and health risk factors involving public health.
6. Proactive involvement with our communities to effectively address issues and goals that are important to those communities. Through CMA's Responsible Care® Community Awareness and Emergency Response (CAER) Code, our facilities remain committed to communicating with the public about facility operations and responding to the community's concerns.
7. Environmentally protective and economically beneficial actions and activities.

Additional Help

You can find ways to define your community and build your outreach program in CMA's Community Outreach Manual and the CAER Code Resource Guide. The manual and guide also contain practical suggestions on how to work towards dialogue with the community. Copies of the documents can be ordered from CMA Publications Fulfillment, 2501 M Street, NW, Washington, DC, 20037. Requests must be in writing.

CMA can point the way to resources you can use on this issue. Please see the following list of CMA contacts. We would also like your suggestions about materials and training that you need.

Lee Salamone, Manager
Environmental Justice Issues
(202) 887-6944

Denise Grant
Legal Counsel
(202) 887-1186

Jayne Davis
Associate Director,
Member Communications
(202) 887-1226

Heather Keith
Manager, State Affairs
(202) 887-1320

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Ethical Dilemmas Regarding Competitive Intelligence

Thomas Furtado

How far should a company go in seeking sensitive information about competitors?

Part A

Gathering and Using Competitor Information

Transformations in the technology of generating and storing information, and the increasing reliance on "knowledge workers" in business and commerce, mean that timely information and creative ideas are often the key differentiators in competitive industries like high-tech engineering and manufacturing, computers, financial services, and industrial and commercial electronics. In an age when clones can appear overnight, companies must take all possible precautions to protect their information from competitors for as long as possible. Likewise, successful businesses will vigorously seek to learn as much as possible about competitors' products and plans.

What are appropriate principles to follow in gathering and using competitive information? Is anything acceptable as long as it is not illegal? Does it matter in what industry and/or in what region of the world we do business?

What is Competitive Information?

One major U.S. corporation with worldwide business activities defines competitive information as follows: It "includes anything related to the competitive environment or to a competitor—for example, information related to products, markets, pricing, or business plans. This information could be drawn from published sources or could otherwise be widely available to the public. Some of this information will be oriented to a specific competitor ('competitor information') and some competitor information would be considered 'proprietary,' 'business confidential,' or 'trade secret' which a business would attempt to hold closely."[1]

As this definition suggests, much competitive information exists in public channels and can be obtained legitimately. For instance, traditional techniques for protecting information have been patents, copyrights and trademarks. While these provide legal protection, the information is in the public domain. By following the patent applications of a firm's employees, a competitor could quickly get a picture of their research. In fact, many companies openly discuss competitive intelligence and some have departments well known in the industry which are dedicated to gathering such information.

Legal gathering of information readily available in the public domain, then, does not raise any ethical concerns. Just as clearly, on the other side, obviously illegal activities such as break-ins, computer hacking, and wiretaps are not ethically ambiguous. Even the people who commit such actions are fully aware they are breaking the law. The tough ethical questions arise when information is gathered in ways that do not fit neatly into either of these categories.

Sources of Competitive Information

One of the most frequent sources of competitive information, especially proprietary information, is a company's own employees. Despite intellectual property agreements intended to establish company ownership of creative efforts funded by the firm, employees still sometimes turn over proprietary information to a competitor. Bitter, disillusioned employees, who have perhaps been by-passed for promotions and other opportunities, see giving confidential data to a competitor as rectifying past wrongs done to them.

Company employees may also be negligent. Extremely sensitive data are left exposed on a desk while the employee goes elsewhere. Folders are left on someone else's desk while attending a meeting. Sales reps leave their briefcases in a customer's office while they go out for lunch. Phone conversations that can be overheard in a public place are often the source of confidential data for someone who happens to be at the right place at the right time.

Customers can also be a source of competitive information. In many cases they are as negligent with the supplier's data as they sometimes are with their own. In other cases, the customer may deliberately give one supplier's proprietary information to another during a bidding process. Some customers choose instead to give all the information from all bidders to the others in an effort to make the process more competitive. They may do so even when the data were furnished to them by the suppliers with "proprietary" and "secret" markings.

Another source of competitive information is technical seminars and conferences. Often attendees target speakers at breaks and attempt to learn critical information. They are most successful at this when they misrepresent themselves, either with a fake name badge or no badge at all, letting the target person think they are merely curious participants and certainly not a competitor.

What Actions Are Ethically Appropriate?

As these examples illustrate, managers in highly competitive industries are faced with numerous opportunities both to actively gather competitive infor-

mation and to use information that may have been given to them. Consider the following example:

You are the engineering director of a large international firm working on a new compact disk that will be able to produce high quality video on the same size surface as an audio disk. You have two formidable competitors and the stakes are enormous. Not only must this small disk be capable of playing movies up to three hours duration, but to capture the video market from cassette tape, the equipment must have recording capability. All three of you have solved the first challenge, but no one seems to be breaking through on the recording issue. Your own engineers have had little success in this regard.

While attending a technical seminar on the subject whose participants also include representatives from your competitors, you listen to a presentation by an engineer from one of the competitors. The presentation touches on the recording problem in a way that makes you think they may have solved the problem.

Discussion Questions

Which of the following actions would be acceptable? why or why not?

1. You make notes for an internal memo summarizing the presentation.
2. You take back to the office the written summary which the presenter distributed.
3. You ask the speaker for a copy of his presentation slides without identifying yourself although you are wearing your name tag.
4. You remove your name tag and ask for a copy, pretending to be with a customer company.
5. On the elevator later, you realize that the conversation next to you is between the presenter and a colleague. They are discussing details of the recording solution. You listen carefully and do not identify yourself.
6. You look in the podium as the last people are leaving and see an internal briefing document the presenter left behind and you decide to take it. (Does it matter whether it is marked "proprietary"?)
7. The presenter approaches you later and tells you he is disillusioned with lack of recognition and advancement opportunities. He confirms that his team has solved the recording problem and hands you the technical data that will enable you to keep pace. As he walks away, he adds that he would like to talk with you about coming to work at your company. You accept the data and share it with your internal team.
8. Another conference participant (not affiliated with any of the competitors) sees you afterward and hands you an internal document from the competitor whose engineer made the presentation. (Does it matter if it is marked "proprietary"? Does it matter whether you ask how this person received the material?) You accept the document and share it with your internal team.
9. An anonymous person calls your hotel room and tells you (before you have a chance to raise questions) several key statistics that, together

with the information presented publicly, gives you enough data to take a new direction in solving the recording problem. Or, you simply find a critical document from the competitor in an envelope outside your hotel room door. You use the data or the document with your internal team.

Part B

Protecting Competitive Information: The Lopez Case

Part A of this case focused generally on how competitor information is gathered, received and used. But when a firm seeks to protect its own information, complications can sometimes arise when the "giver" and the "receiver" disagree over the facts and over the extent and limits of what can be protected. A case in point is the incident concerning Mr. José Ignacio Lopez de Arriortua, the head of global purchasing at General Motors who left to join Volkswagen in a similar position in March 1993.

Within a month, GM claimed that Mr. Lopez had taken with him highly secret information about their Opel division in Germany. Shortly thereafter, GM filed a complaint with the German courts alleging industrial spying and theft. In subsequent months, General Motors went to court to prevent Mr. Lopez from working for Volkswagen, and also attempted to prevent seven other GM employees who had left with him from working for VW. At the time of this writing, many of the issues are still in the courts awaiting decisions. The German courts ruled, however, that Mr. Lopez and his team could begin work at Volkswagen.

Although the details are not entirely clear and the situation may be resolved through legal remedies or an out-of-court settlement by mid-year 1995, the following general account based on published reports provides a springboard for considering important ethical issues in cases like this.

Background at General Motors

General Motors has been the largest auto manufacturer in the world for several decades. In the 1980s, however, GM began to lose market share to Japanese and German auto makers, and by the early 1990s, it was also dealing with a strong resurgence of Ford and Chrysler. In particular, GM had been slow to change its manufacturing process, and consequently found itself competing with higher cost structures than many of its competitors.

One bright spot in the GM story was the performance of its German company, Adam Opel AG, which had slashed costs considerably through a very aggressive approach to its suppliers. The architect of this initiative was José Ignacio Lopez, Opel's head of purchasing. Through what some called heavy-handed tactics, Mr. Lopez had successfully renegotiated many supplier contracts to provide much lower costs, and he was given much of the credit for the turnaround of GM in Europe. By 1993, General Motors was a very close second to Volkswagen in auto production in Europe.

In the meantime, GM had brought Mr. Lopez to Detroit in May 1992 to replicate his achievements as the head of global purchasing for the entire organization. Using the same aggressive approach, he soon began to make a difference in the company and was named the auto industry's "Man of the Year" for 1992 by a major trade publication in Detroit. Ironically, only a few months later, he was the center of a major confrontation between General Motors and Volkswagen.

Lopez Moves to VoLkswagen

Volkswagen, the largest auto producer in Europe, had fallen on hard times in the early 1990s. Like GM, it was having a difficult time keeping its costs in line and staying competitive. Over the past several years, it had seen General Motors and its Opel company cut into its market share. Obviously, VW was well aware of the role Mr. Lopez had played in the GM resurgence.

Some time in early 1993, Volkswagen and Mr. Lopez began to talk. Mr. Lopez had reportedly become disenchanted with his employer over what he saw as a broken promise. Apparently feeling betrayed, he decided to leave GM.

General Motors Reaction

Once Mr. Lopez told GM Chief Executive John Smith that he was leaving, events moved swiftly. A week later, on March 16, 1993, Mr. Lopez was appointed head of purchasing and production for Volkswagen, and within another week, seven of his colleagues, who had followed him from Opel to Detroit, resigned from General Motors to join him at VW. On April 7, Mr. Smith made the first serious allegation that Mr. Lopez may have stolen secret documents and plans about future GM and Opel products and strategies, a charge Mr. Lopez denies. Six weeks later, GM went to court in Germany alleging that Lopez and others had stolen secret competitive information.

In the two years since, charges and countercharges have been made by individuals and the companies concerned. Boxes of documents were found and seized by the courts. Volkswagen denied the material was secret and went so far as to suggest the documents were planted by Opel security forces. Opel and GM attempted to ban Lopez and the other seven from working for VW, but they lost this case in the German Labor Law court in Wolfsburg in September 1994. At this point, Mr. Lopez had been on the job for over a year and was receiving full support over the incident from the Volkswagen head, Ferdinand Piëch.

Discussion Questions

It is important to note that none of the charges against Mr. Lopez has been established in court. It is also true that this case raises complex legal issues that would require sophisticated legal analysis. For our purposes, the case can be used to illustrate a series of ethical questions that arise when "intellectual property" is involved and "knowledge workers" move from one job to another.

1. There seems to be general agreement that Mr. Lopez was the architect of the process he brought to Opel and subsequently to General Motors.
   - What does a manager like Mr. Lopez have a right to take with him and what is GM's "property"?
   - How broadly can one interpret the concept of intellectual property?
   - Does this concept apply to knowledge obtained before coming to work for a company if that knowledge is given a forum in which to grow at the new company?
2. Mr. Lopez apparently persuaded seven of his staff to leave General Motors and to join him at Volkswagen.
   - Is it ethical for someone going to a major competitor to persuade others to leave with him and to bring their technical expertise to the venture?
   - Does the ethical issue change if only one person were leaving? If an entire department left?
   - Does it make a difference how the individuals were treated (e.g., Lopez's apparent perception of a broken promise)?
   - What actions are appropriate by the "sending" company to prevent such losses?
3. Boxes of GM documents were discovered in a domicile used by the General Motors group that followed Mr. Lopez to Volkswagen. VW asserted that none of the material was secret or significant competitive information.
   - What kinds of documents, if any, is it legitimate for the departing managers to take?
   - What would be inappropriate or unethical to take?
4. Mr. Lopez obviously holds a great deal of information in his head about GM's confidential, competitive information (e.g., strategic plans for new products, forecasts on production). But some of this information (e.g., effective strategies for dealing with particular suppliers) resulted from applying his own distinctive expertise.
   - Can his use of his knowledge be considered unethical theft or possession of competitive information?
   - What guidelines would you propose to assist a high level, experienced manager coming from a competitor in applying or ignoring what he or she knows (without benefit of documents)?

Endnotes

1. United Technologies Corporation Policy Clarification Circular "Conflicts of Interest: Gathering Competitive Information."

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Drawing the Line

Instructions: Refer to the first set of discussion questions (#1–9) from the Competitive Intelligence Case. Nine different scenarios are given, some of which may be ethical ways to gain competitive intelligence, and others of which may be unethical ways to gain competitive intelligence. Complete this worksheet and be prepared to discuss your analysis in class.

1. Which scenarios do you think suggest *ethical* actions? (Write the numbers here.)

2. Which scenarios do you think suggest *unethical* actions? (Write the numbers here.)

3. Compare your answers for questions #1 and #2. Find the ethical and unethical scenarios that are *most similar.* (Write the numbers here.)

   Ethical: _____ Unethical _____

4. What are the significant differences between the two scenarios identified in question #3 that make one alternative ethical and the other unethical?

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